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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. ———

UNITED STATES OF AMERICA, APPELLANT

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE, BARTON AND MILTON RAY WOODWARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App. A, *infra*, pp. 1a–10a) is reported at 335 F. Supp. 641.

JURISDICTION

The judgment of the district court (App. B, *infra*, p. 11a) was entered on January 6, 1972. A notice of appeal to this Court was filed on January 14, 1972. This Court has jurisdiction of this direct appeal under 18 U.S.C. 3731 (1964 ed.), since the district court's dismissal of the indictment was founded upon its construction of the underlying statute. See *United States* v. *Interna-*

tional Minerals and Chemical Corporation, 402 U.S. 558; *United States* v. *Fabrizio,* 385 U.S. 263.[1]

QUESTION PRESENTED

Whether, during the course of a lawful strike against an employer engaged in interstate commerce, an agreement by certain union officers and members to commit unlawful acts of violence, for the purpose of coercing the employer to consent to higher wages and other union contract demands, constitutes a violation of the Hobbs Act, 18 U.S.C. 1951.

STATUTE INVOLVED

18 U.S.C. 1951 provides in pertinent part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> * * * * *
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual

[1] The 1971 amendment to the Criminal Appeals Act (18 U.S.C. 3731), providing that all appeals from dismissals of indictments or informations must be taken to the courts of appeals, 84 Stat. 1890, is not applicable to this case because the amendment is effective only as to cases begun in the district courts after its effective date, January 2, 1971. See *United States* v. *Jorn,* 400 U.S. 470, 474 n. 1, 477–478 n. 6.

> or threatened force, violence, or fear, or under color of official right.
>
> (3) The term "commerce" means * * * all commerce between any point in a State * * * and any point outside thereof * * *.

STATEMENT

On October 15, 1970, a one-count indictment was returned in the Eastern District of Louisiana charging appellees with conspiracy to violate the Hobbs Act by engaging in acts of violence and destruction of property during the course of negotiations for a new collective bargaining agreement between the International Brotherhood of Electrical Workers (IBEW) and Gulf States Utilities Corporation. The indictment alleged that, during the period October 1969 through June 2, 1970, Gulf States Utilities was in the business of furnishing electricity to communities in Louisiana and Texas and was part of an electrical network which served other states. The employees of Gulf States Utilities were represented by Local 2286 of the IBEW. One appellee (Barton) was an officer of this union. During the same period, some of the subcontractors employed by Gulf States Utilities were represented by Local 390 of the IBEW. Two of the appellees (Enmons and Bendo) were officers of this union; the other (Woodward) was a member. The indictment charged that the appellees conspired among themselves and with other unindicted co-conspirators (Pet. App. C, *infra*, p. 1a-4a):

> * * * to obstruct, delay, and affect commerce * * * and the movement in commerce of electrical energy and other articles and commodities by extortion * * * and to commit physical violence to property in furtherance of said plan to obstruct, delay and affect commerce.

> It was part of said conspiracy that the [appellees] and co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said [appellees] and co-conspirators, in that [appellees] and the co-conspirators did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits.

It was also alleged that, in furtherance of the conspiracy, appellees, or persons acting at their direction, committed five acts of violence against the property of Gulf States Utilities including the shooting and sabotage of transformers and the blowing up of a transformer substation.

Appellees filed a motion to dismiss the indictment as not charging an offense under the Hobbs Act. Following a hearing, the motion was granted. The district court stated (App. A, *infra*, p. 8a): "We find no case where a court has gone so far as to hold the type of activity involved here to be a violation of the Hobbs Act." It deemed critical the fact that the wages and other monetary benefits sought to be obtained from the employer were for genuine and desired services. This, the court concluded, distinguished the present case from the situation where "the wages sought by violent

acts are wages to be paid for unneeded or unwanted services, or for no services at all"; in such circumstances, the court recognized that the acts of violence would constitute extortion prohibited by the Hobbs Act (App. A, *infra*, p. 8a).[2] But here it held that, since the acts of violence were in furtherance of a legitimate end, *i.e.*, higher wages for needed and desired services, they were not proscribed by 18 U.S.C. 1951. This conclusion was based on a construction of the statute whereby "neither the wages of bona-fide employees nor the 'right to negotiate employment contracts—without illegal disruption' constitute 'property' as contemplated by the Hobbs Act" (App. A, *infra*, p. 9a).

THE QUESTION IS SUBSTANTIAL

1. The decision below severely curtails the reach of the Hobbs Act by limiting its ban on extortionate conduct directed against employers to situations where wages are sought for superfluous and unwanted labor. This construction finds no support in the language of the Act, is contrary to the legislative history attending the statute, and is inconsistent with the essential holding of this Court in *United States* v. *Green*, 350 U.S. 415.

In *Green*, this Court considered the sufficiency of an indictment under the Hobbs Act charging a local union and its members with acts of extortion against an employer in an attempt to force him to consent to a union contract for certain maintenance work, and thereby obtain " 'his money, in the form of wages to be

[2] The Court cited for this point *United States* v. *Kemble*, 198 F. 2d 889, 891–892 (C.A. 3), certiorari denied, 344 U.S. 893.

paid for imposed, unwanted, superfluous and fictitious services of laborers' " (350 U.S. at 417). Following conviction, the district court granted a motion in arrest of judgment on the ground that the Hobbs Act barred the taking of property from another only when the taking is for the extortioner's personal advantage. This Court reversed.

In reviewing the legislative history of the Hobbs Act, this Court noted in *Green* (as did the district court here) that the Act was a congressional response to this Court's construction of Section 2 of the Federal Anti-Racketeering Act of 1934, 48 Stat. 979, in *United States* v. *Local 807,* 315 U.S. 521. That provision barred, with respect to interstate commerce, exactions of valuable considerations by force, violence or coercion, "not including, however, the payment of wages by a bona-fide employer to a bona-fide employee." The Court held in *Local 807* that this exception covered members of a city truck-drivers' union who had sought by threat of violence to procure wages from their employers for superfluous service. As later observed in *Green* (350 U.S. at 419–420; footnotes omitted):

> * * * In the Hobbs Act, 60 Stat. 420, carried forward as 18 U.S.C. § 1951, which amended the Anti-Racketeering Act, the exclusion clause involved in the *Local 807* decision was dropped. The legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding.

> Title II of the Hobbs Act provides that the provisions of the Act shall not affect the Clayton Act, §§ 6 and 20, 38 Stat. 731, 738; the Norris-La Guardia Act, 47 Stat. 70; the Railway Labor Act, 44 Stat. 577; or the National Labor Relations Act, 49 Stat. 449. There is nothing in any of those Acts, however, that indicates any protection for unions or their officials in attempts to get personal property through threats of force or violence. Those are not legitimate means for improving labor conditions. If the trial court intended * * * to indicate any such labor exception, which we doubt, it was in error.

Although the indictment in *Green* charged the extorting of wages for superfluous and unwanted services, the Court's holding in no way depended on this fact. Rather, the Court interpreted the Hobbs Act as extending to *any* use of extortionate means by union employees or officials to obtain, with consent, property of an employer engaged in interstate commerce. This construction is clearly correct. Nor is there any indication in the legislative history of the Act that Congress intended to limit coverage to an employee's demand for higher wages only if it related to superfluous, as opposed to desired, work. On the contrary, the "legislation is directed at the protection of interstate commerce against injury from extortion" without qualification. *Green, supra,* 350 U.S. at 420. Proponents of the bill that was ultimately adopted stated on the floor of the House (91 Cong. Rec. 11843–11844):

> Mr. SUMNERS of Texas. There is nothing in this bill dealing with persons connected with

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organized labor as such. It is just an attempt on the part of the Committee on the Judiciary to bring in a bill that will prevent this type of robbery in interstate commerce.

Mr. MICHENER. That is all there is to it. The only way labor is involved is that if these offenders belong to the union, and [by way] of robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a legitimate union activity. * * *

Mr. ROBINSON of Kentucky. Just one other point on that. It does not apply to labor unions alone, it applies to any group of men that are interfering with interstate commerce, whether they be labor unions, farm organizations, or anybody else.

Mr. MICHENER. Why, of course. All are treated alike and no group is given special permission to violate the law. Labor should not ask for such exception.

See also, to the same effect, 91 Cong. Rec. 11919 (remarks of Rep. Hobbs); 91 Cong. Rec. 11909 (remarks of Rep. Vursell); 91 Cong. Rec. 11910–11911 (remarks of Rep. Spinger); 91 Cong. Rec. 11913 (remarks of Rep. Whittington).

In contexts outside the field of labor relations, it has been recognized that the proscription in the Hobbs Act on extortionate conduct applies not merely to the wrongful use of force and threats in seeking illegitimate ends, but also has equal application to actual and threatened force for the purposes of attaining legitimate ends. *E.g., Battaglia* v. *United States,* 383 F.2d 303 (C.A. 9), certiorari denied, 390 U.S. 907 (demand

to use victim's establishment as a location for defendant's pool table); *United States* v. *Tropiano,* 418 F.2d 1069 (C.A. 2), certiorari denied, 397 U.S. 1021 (wrongful use of threats to obtain right to solicit business). Nothing in the statute or its legislative history suggests that any different rule was contemplated for members of labor unions. But that is precisely the effect of the district court's construction of the statutory term "property" to include only wages sought for unwanted services. Such a reading of the statute is, we submit, contrary to both the letter and the spirit of the Act. Money used to pay wages is plainly property. Its character does not change simply because it is paid for work which is real and desired.

2. Nor do we think that it can be argued in this case that the obtaining of the employer's consent to part with such "property" was not "induced by wrongful use of actual or threatened force, violence, or fear * * *," within the meaning of the statutory definition of "extortion" (18 U.S.C. 1951(b)(2)). As we earlier stated, the allegations in the indictment, which must be accepted as admitted for present purposes, specified as acts of violence the shooting and sabotage of transformers and the blowing up of a transformer substation (App. C *infra,* pp. 14a–15a). It is difficult to conceive of acts more plainly fitting within the concept of extortionate force.

Such action is significantly different from the conduct which the Ninth Circuit recently concluded was not covered by the Hobbs Act in *United States* v. *Caldes and Lowery,* C.A. 9, No. 71–2261, decided February 10, 1972. *Caldes and Lowery* involved a claim

of extortion in connection with collective bargaining negotiations between the Laundry and Drycleaning International Union, Local 369, and Mission Linen Supply Company. On two separate occasions, members of the union were seen throwing a vial of green dye into a laundry hamper owned by the company. Following a conviction under the Hobbs Act, the court of appeals reversed (App. D. *infra,* pp. 17a–26a). While it indicated in dictum—in our view erroneously—that the term "property" applied in this context only to wages demanded for unwanted services, the court did not rest its decision on this ground. Rather it concluded that the dye-throwing episodes were no more than mere "* * * byplay while trying to gain larger wages or better working hours and conditions * * *" (App. D, *infra,* p. 23a). Characterizing the acts as "mischievous misconduct," the Ninth Circuit held that Congress did not intend "acts of violence which are the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation to be 'extortion' within the meaning of the Act" (App. D, *infra,* p. 26a).

Whether or not *Caldes and Lowery* is correct on its facts, a different result is required in the present case. Here, on three separate occasions appellees, "using a high powered rifle, fired into a transformer substation, owned by Gulf States Utilities Company * * *" (App. C, *infra,* pp. 14a–15a). On another occasion, they "went to a substation owned by Gulf States Utilities Company

* * * [and] drained the oil from a transformer located thereon" (*ibid.*). And, on still another occasion they "blew up a transformer substation owned by Gulf States Utilities Company * * * using twelve sticks of dynamite" (*ibid.*). Such action cannot be labelled "mischievous misconduct."

To be sure, as pointed out by the Ninth Circuit in *Caldes and Lowery* (App. D, *infra*, p. 23a), "often in legitimate labor disputes, tempers grow short, blows are struck on the picket line, and minor but intentional damage is done to the property of the employer." Perhaps in such circumstances, isolated acts of violence "do not partake of the nature of extortion" (*United States* v. *Local 807, supra,* 315 U.S. at 523), since there is no accompanying intent to coerce the employer to part with his property. That question is not presented by the dismissal of the indictment in the instant case, however; for here the conduct cannot be lightly dismissed as merely "the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation * * *" (*United States* v. *Caldes and Lowery, supra;* App. D, *infra,* p. 26a).[3]

It is, instead, clearly the type of conduct Congress intended to reach by the phrase, "wrongful use of actual or threatened force, violence, or fear * * * (18 U.S.C. 1951(b)(2)).

[3] It could be raised as a defense at trial that the acts in question were not intended to coerce the employer—although that would seem highly unlikely if the overt acts alleged in fact occurred.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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MARCH 1972.

APPENDIX A

United States District Court, Eastern District of Louisiana, Baton Rouge Division

Criminal—No. 1918

UNITED STATES OF AMERICA

versus

TRAVIS PAUL EMNONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD

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WEST, Chief Judge:

Defendants have been indicted for alleged violations of the Hobbs Act, 18 U.S.C.A. § 1951. They have moved to dismiss the indictment on the ground that the acts alleged therein do not constitute a federal offense under that act.

Briefly stated, three of the defendants were members of the International Brotherhood of Electrical Workers Union, Local 390, and one was a member of Local 2286 of the same union. The indictment charges them with conspiring to obstruct, delay, and affect commerce by extortion in violation of the Hobbs Act. The indictment particularly charges that:

> "9. It was a part of said conspiracy that the defendants and the co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said defendants and co-conspirators in that defendants and the co-conspirators did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits."

The indictment then charges the defendants with certain overt acts designed to cause the malfunctioning of transformers and to damage other property belonging to Gulf States Utilities Company. The defendants, in support of their motion to dismiss the indictment, take the position that the Hobbs Act, which makes it a federal crime to obstruct, delay, or affect interstate commerce by robbery or extortion, simply does not include acts of violence which might occur while em-

ployees are in the process of picketing an employer in furtherance of some lawful labor objective such as securing higher wages for persons employed by the employer pursuant to a collective bargaining agreement. The defendants would distinguish this type of violence from that which is designed to extract from an employer by violence or threats of violence, money or property for which nothing is given in return, and to which the extorter is not entitled, such as wages for unnecessary and unwanted employees. The defendants argue that the Hobbs Act has never been held to include, and was never intended to include, activities, even though unlawful under State law, which have for their purpose the securing of higher wages for legitimate employees who are parties to a lawful collective bargaining agreement.

The Government, on the other hand, would interpret the Hobbs Act much more broadly. Their interpretation would include in the definition of "property" (1) higher wages sought by collective bargaining, and (2) the company's "right to negotiate" the wage questions without unlawful interference.

While there is, as far as this Court can determine, no definitive jurisprudential answer to this dispute, and while there is, in the legislative background of the Hobbs Act, inferences at least to support both sides, this Court, nevertheless, concludes that the Hobbs Act was not intended by the Congress to have the broad application for which the Government contends. This is not to say that there could not be cases in which violence or threats of violence which occur during labor disputes could be prosecuted under the Hobbs Act. It is to say, though, that under the circumstances of this case, the indictment does not charge an offense punishable under the Hobbs Act. The caveat contained in *Morissette* v. *United States*, 342 U.S. 246, 72 S. Ct. 240, 1952, is apropos the present situation:

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"The spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute."

The pertinent parts of the Hobbs Act under which defendants were indicted, read as follows:

"(a) Whoever in any way or degree obstructs, delays, or affects commerce, or the movement of any article or commodity in commerce, by robbery or extortion or attempts to conspire so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined * * *

(b) As used in this section * * *

"(1) * * *

"(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." 18 U.S.C.A. § 1951.

Section (b)(3), then, in effect, defines "commerce" to mean interstate commerce.

In the case before us, the defendants were union members who were on strike against their employer, Gulf States Utilities Company. The main purpose of the strike was to secure higher wages for Gulf States employees. In the course of the strike, violence apparently erupted. It is alleged that the defendants either individually or in conspiracy, one with the other, caused damage to certain transformers and other property of Gulf States Utilities Company by firing into said property with high powered rifles or by draining oil out of certain transformers for the purpose of causing them to malfunction. There is no sug-

gestion that the strike itself was illegal, nor is there any suggestion that the object of the strike, i.e., to secure higher wages from Gulf State Utilities Company was an illegal objective. The only questiou presented is whether or not the acts with which defendants are charged constituted "extortion" as contemplated by the Hobbs Act. We think they do not. The Hobbs Act grew out of the case of *United States* v. *Local 807*, etc., 315 U.S. 521, 62 S.Ct. 642 (1942), which involved a prosecution brought pursuant to the Anti-Racketeering Act of June 18, 1934, 18 U.S.C.A. § 420(a). That statute made it a crime when:

> "Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce, or any article or Commodity moving or about to move in trade or commerce— (a) obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable consideration, or the purchase or rental of property or protective services, *not including, however, the payment of wages by a bona-fide employer to a bonafide employee:* * * *" (Emphasis added.)

The question involved was whether or not the *exemption* contained in the statute applied only to one who had attained the status of a bona fide employee prior to the time of the alleged violent acts aimed at seeking payment of wages, or whether the exemption also applied to one seeking to become a bona fide employee at the time the acts complained of were committed. The United States Supreme Court held that the latter category was also included within the exemption on the ground that these activities formed a part of regular activities of labor unions, and that the Congress did not intend to impair the ordinary, lawful activities of unions, one of which was to seek work for its members as well as to seek more favorable wages for

people already employed. Shortly after this decision, the Hobbs Act was introduced as H.R. 6872 of the 77th Congress, 2d Session. In its final form the pertinent provisions of that Act read as hereinbefore set forth. It will be noted that in the language of the Hobbs Act, the exclusion pertaining to wages found in the Anti-Racketeering Act was omitted. But it is further noted that instead of making it a crime to use threats or force, etc., in order to obtain "the payment of money or other valuable consideration," the Hobbs Act used what appears to be more restrictive language and made it a crime to "obstruct, delay or affect interstate commerce" by "robbery or extortion." Hence, under the Hobbs Act, in order to constitute a crime, one must obstruct, delay, or affect interstate commerce or attempt or conspire to do so, by "robbery or extortion," whether or not physical violence, or threats of physical violence to persons or property is used. While at first blush it might appear that by passage of the Hobbs Act Congress intended to broaden the prior act by eliminating the exclusion pertaining to wages, a closer look leads to the conclusion that even though the wage exemption was eliminated, the actual scope of the crime was narrowed in other respects. Under the Hobbs Act, in order to constitute a federal offense, the defendant must be shown to have resorted to "robbery or extortion" to accomplish his design. In his testimony before the House Sub-Committee considering his bill, Congressman Hobbs explained it this way:

> "* * * Here, the prime purpose is not to punish a criminal for his crime against State law, but rather to punish interference with interstate commerce by robbery or extortion. This bill would invoke the aid of the federal authorities to prevent the commission of these crimes and to protect interstate commerce.

> "In the second place, I wish to call your attention to the fact that the elements of the crimes discussed by this bill are essentially the same as the elements of robbery or extortion. The only added element is interference with interstate commerce." Hearings before Sub-Committee No. 3 of House Committee on the Judiciary, 77th Congress, 2d Session, pp. 426–427.

Hence, "robbery" or "extortion" were made essential elements of the crime, and "extortion" was defined in the statute as:

> "The obtaining of property from another with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C.A. § 1951(b)(2).

Since we are, of course, bound by this express definition of extortion, we thus narrow the issue here to whether or not these defendants have, in fact, been charged with the "obtaining of property from another" in violation of the Act. The indictment charges that the defendants did, and conspired to do the things proscribed by the Act "by extortion, as that term is defined in Section 1951 of Title 13, United States Code, * * *." It then charges generally that the the "property" which defendants extorted was "in the form of wages and other things of value with the consent of Gulf States Utilities Company * * * such consent to be induced by the wrongful use of actual force, violence and fear of economic injury * * *." It then elaborates a bit by saying not that wages or other property was obtained, but simply that unlawful violence or threats of violence was used "in order to force said company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits." The remainder of the indictment simply enumerates specific acts of violence allegedly

perpetrated by defendants in furtherance of their conspiracy to extort.

In its brief in opposition to defendants' motion to dismiss the indictment, the Government says that:

> "Generally the 'property' is the higher wages which were to be obtained from Gulf States Utilities Company as a result of the acts of violence and destruction which were perpetrated. Additionally, the Government contends that the 'property' obtained from Gulf States Utilities Company was its *right* to negotiate employment contracts and to conduct business in an open market without illegal disruption and interference with commerce associated therewith."

We cannot conclude, in this case, that these things constituted either the "property" or the "extortion" contemplated by the Hobbs Act. We find no case where a court has gone so far as to hold the type of activity involved here to be a violation of the Hobbs Act. If the wages sought by violent acts are wages to be paid for unneeded or unwanted services, or for no services at all, there is good authority for the conclusion that such would constitute the extortion prohibited by the Act. Thus, in *United States* v. *Kemble,* 198 F.2d 889, cert, den. 344 U.S. 893 (1953), the Court said:

> "In these circumstances, the conclusion seems inescapable that Congress intended that the language used in the 1946 Statutes be broad enough to include, in proper cases, the forced payment of wages. We say 'in proper cases' advisedly. For it is not necessary that we here consider the great variety of circumstances in which coercion may be involved in the payment of wages. We need not consider the normal demand for wages as compensation for services desired by or valuable to the employer. It is enough for this case, and all we decide, that

> payment of money for imposed, unwanted and superfluous services such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the Statute."

But as noted, the Court did not conclude that in all cases where coercion was used in connection with the demand for wages a federal offense would be involved. And again, in *United States* v. *Sweeney,* 262 F.2d 272 (CA 3–1959), the Court, recognizing that all acts of violence in connection with wage demands may not constitute a violation of federal law said:

> "We need not decide in this case how far concerted employee activity through a union, accompanied by violence or threats thereof, is exempted from the Act. The reason we do not need to meet this question is that here we do not find evidence in Sweeney's conduct of union activity. The conference at the Pittsburgh hotel, above described, was conducted by representatives of the union and representatives of the employer. An agreement was reached. There was, so far as we know, no violence or threats of violence at that amicable meeting. The activities of Sweeney seem to have been self-prompted according to the testimony. He ignored the agreement reached and forced another one by violence on the employer."

In order for there to have been a violation of the Hobbs Act here we would have to find that the defendants obtained, or attempted to obtain, or conspired to obtain "property" from Gulf States Utilities Company, with its consent, but by use of actual or threatened force or violence. It is the opinion of this Court that neither the wages of bona-fide employees nor the "right to negotiate employment contracts—without illegal disruption" constitute "property" as contemplated by the Hobbs Act. The union had a right to disrupt the business of the employer by lawfully striking for higher wages. Acts of violence occurring dur-

ing a lawful strike and resulting in damage to persons or property are undoubtedly punishable under State law. To punish persons for such acts of violence was not the purpose of the Hobbs Act. As stated by Congressman Hobbs:

> "* * * Here, the prime purpose is not to punish a criminal for his crime against state law, but rather to punish interference with interstate commerce by robbery or extortion."

The acts of violence with which these defendants are charged are not approved or condoned, and it would be a miscarriage of justice if State prosecution did not follow in their wake. But these acts simply did not constitute the "obtaining of property from another" that is contemplated by the Hobbs Act.

For these reasons the defendants' motion to dismiss this indictment will be granted, and a judgment and order will be entered accordingly.

Baton Rouge, Louisiana, December 16, 1971.

Original Signed: E. GORDON WEST,
United States District Judge.

APPENDIX B

United States District Court for the Eastern District of Louisiana, Baton Rouge Division

Criminal—No. 1918

UNITED STATES OF AMERICA

versus

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD

JUDGMENT AND ORDER

This matter came before the Court on a motion to dismiss by the defendants, and the issues having been heard and the Court having duly rendered a decision for written reasons assigned and filed herein,

IT IS ORDERED AND ADJUDGED that the indictment in the captioned matter charging Travis Paul Enmons, Jackie J. Bando, Ed Wayne Barton, and Milton Ray Woodward with violations of the Hobbs Act, 18 USCS 1951, be and it is hereby, DISMISSED.

Baton Rouge, Louisiana, January 6, 1972.

E. GORDON WEST,

United States District Judge.

APPENDIX C

In the United States District Court for the Eastern District of Lousiana, Baton Rouge Division

Criminal Docket No. 1918

VIO: Title 18 USC 1951; Title 18 USC 2

UNITED STATES OF AMERICA

versus

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD

INDICTMENT FOR VIOLATION OF HOBBS ACT

The Grand Jury charges that:

COUNT I

1. At all times herein mentioned, Gulf States Utilities Company, a Texas corporation, was a public utilities company, operating in the states of Louisiana and Texas. It was the principal supplier of electrical energy to the area comprising the Baton Rouge Division of the Eastern District of Louisiana, and all of its electrical facilities in said vicinity were connected to and part of an interstate electrical network between the states of Texas, Louisiana, and Mississippi. Further, articles and materials necessary for the construction and maintenance of the facilities of the Gulf States Utilities Company move in interstate commerce.

2. At all times herein mentioned, the International Brotherhood of Electrical Workers, Local Union 390,

was a Labor Union which represented employees who worked for the independent contractors employed by the Gulf States Utilities Company.

3. At all times herein mentioned, the International Brotherhood of Electrical Workers, Local Union 2286, was a Labor Union which represented the employees of the Gulf States Utilities Company.

4. TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, and MILTON RAY WOODWARD, are named defendants herein.

5. JOHN E. LAMBERT and WILLIAM THORNHILL are named herein as co-conspirators, but not defendants.

6. At all times herein mentioned, the defendants TRAVIS PAUL ENMONS, JACKIE J. BENDO, MILTON RAY WOODWARD, and co-conspirators WILLIAM THORNHILL and JOHN E. LAMBERT were members of International Brotherhood of Electrical Workers, Local 390. TRAVIS PAUL ENMONS was the business manager for said local and JACKIE J. BENDO was the assistant business manager.

7. At all times herein mentioned, defendant ED WAYNE BARTON was a member of and business manager for International Brotherhood of Electrical Workers, Local 2286.

8. Commencing on or about October 30, 1969, and continuing to on or about June 2, 1970, in the Baton Rouge Division of the Eastern District of Louisiana, and within the jurisdiction of this court and elsewhere, defendants did knowingly, willfully and unlawfully combine, conspire and agree together and with others, including the named co-conspirators, WILLIAM THORNHILL and JOHN E. LAMBERT, to obstruct, delay, and affect commerce, as defined in Section 1951 of Title 18, United States

Code, and the movement in commerce of electrical energy and other articles and commodities by extortion, as that term is defined in Section 1951 of Title 18, United States Code, and to commit physical violence to property in furtherance of said plan to obstruct, delay and affect commerce.

9. It was a part of said conspiracy that the dedefendants and the co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said defendants and co-conspirators, in that defendants and the co-conspirators did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the Internatinal Brotherhood of Electrical Workers calling for higher wages and other monetary benefits.

10. It was further a part of said conspiracy that defendants and the co-conspirators did, in fact, commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company, to-wit: transformers, substations and other property used to transmit electrical energy between the States of Texas, Louisiana, and Mississippi.

11. The following specific acts of violence and destruction were perpetrated in furtherance of the aforedescribed conspiracy:

A. On October 30, 1969, defendant JACKIE J. BENDO, together with co-conspirator JOHN E. LAMBERT, using a high powered rifle, fired into

a transformer substation, owned by Gulf States Utilities Company, known as the Alsen Substation, with the intent to cause said equipment to malfunction.

B. On or about November 10, 1969, defendant, MILTON RAY WOODWARD, together with co-conspirator JOHN E. LAMBERT, using high powered rifles, fired into a transformer substation powered by Gulf States Utilities Company, known as the Lindsey Substation, with the intent to cause said equipment to malfunction.

C. On or about December 9, 1969, defendant, MILTON RAY WOODWARD, together with co-conspirators JOHN E. LAMBERT and WILLIAM THORNHILL, went to a substation owned by Gulf States Utilities Company, known as the Port Hudson Bulk Station where they drained the oil from the transformers located thereon, with the intent to cause said equipment to malfunction.

D. On or about December 9, 1969, defendant MILTON RAY WOODWARD, together with co-conspirators JOHN E. LAMBERT and WILLIAM THORNHILL, went to a transformer substation known as the Lindsey Substation owned by Gulf States Utilities Company, and fired into the said substation with a high powered rifle for the purpose of causing said transformer to malfunction.

E. On or about June 2, 1970, co-conspirators WILLIAM THORNHILL and JOHN E. LAMBERT at the instructions of the defendant, JACKIE J. BENDO, blew up a transformer substation owned by the Gulf States Utilities Company, known as the Sandy Creek Substation, using twelve sticks of dynamite.

All of which acts by defendants were in violation of Title 18, United States Code, Sections 1951 and 2.

A True Bill:

/s/ RALPH E. JONES,
Foreman.

GERALD J. GALLINGHOUSE,
United States Attorney.

JULIAN R. MURRAY, JR.,
Assistant United States Attorney.

JOSEPH R. MCMAHON, JR.,
Assistant United States Attorney.

APPENDIX D

In the United States Court of Appeals for the Ninth Circuit

No. 71-2261

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

THEODORE CALDES AND WELLAINE M. LOWERY, DEFENDANTS-APPELLANTS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Before: JERTBERG and WRIGHT, Circuit Judges, and WILLIAMS, District Judge.[1]

WILLIAMS, District Judge:

Defendants were indicted in the District Court of Arizona and charged in a two count indictment with violating the Hobbs Act, 18 USC § 1951. They appealed after being convicted before a jury of both counts. Caldes was a field representative of AFL-CIO and Lowery was president of the Laundry and Drycleaning International Union, Local 369. The Laundry Workers Union and Mission Linen Supply Company (Mission) were involved in protracted negotiations for a collective bargaining agreement and these efforts were still in progress at the times of the incidents which were the basis of this indictment.

Mission is a corporation which engages in interstate commerce and is in the business of renting linen and

[1] Honorable David W. Williams, United States District Judge for the Central District of California, sitting by designation.

other supplies to hospitals, hotels and other institutions. Jurisdiction is found in 28 USC §§ 1291 and 1294.

The Hobbs Act provides in pertinent part that:

> "(a) Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in interstate commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property and furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000.00 or imprisoned not more than 20 years, or both.
>
> "(b) As used in this section
>
> (1) * * *
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use or actual or threatened force, violence or fear or under color of official right." 18 USC § 1951.

Appellants were accused of two incidents. On October 24, 1969, they followed one Ramon Herrera, a driver for Mission, whose job was to deliver linen to Mission's customers. When Herrera stopped for a red light he saw Lowery throw an object into his truck from a car driven by Caldes. Herrera returned the truck to the company's plant and found a green substance which appeared to be a dye, along with broken glass on the floor of the truck. A malicious mischief report was filed with local police but no charges were instituted in state court. The FBI began surveillance of the appellants and on December 3, 1969, witnessed the events that formed the accusation of count 2. That afternoon FBI agents saw Caldes and Lowery drive to the Georgian Court Nursing Home, a customer of Mission. One agent testified that Caldes ran from the car toward the nursing home and then quickly returned to the car and drove away. The

agent found a laundry hamper sitting in a breezeway directly in line with Caldes' path of travel full of linen discolored by a green dye. A glass jar containing an identical substance was later found in Caldes' car along with a list of Mission's customers and the numbers of its trucks.

The damage done in each instance was minimal and appellants seem not to seriously dispute their involvement in the mischief. They raised two points on appeal:

(1) did the Government establish beyond a reasonable doubt that defendants acted in furtherance of a plan to pressure the company into a collective bargaining agreement through the wrongful use of force, and

(2) does the Hobbs Act reach violence to property as part of a plan to extort a thing of value in the form of a collective bargaining agreement covering wages, hours and working conditions of *wanted* employees?

The first can be disposed of quickly. There was a labor dispute which had gone on for almost two years involving Mission; defendants were labor leaders who were seen on two instances committing acts of vandalism against Mission's property of the type that could logically be inferred as "getting a message" to the company that if it did not settle, the level of violence might escalate. We are obliged to look at the evidence in the light most favorable to the Government in this criminal appeal, *Glasser* v. *United States,* 315 U.S. 60 (1942) and *United States* v. *Nelson,* 419 F.2d 1237 (9th Cir., 1969), and in a real sense there was ample evidence from which the jury could logically conclude that the violence was intended to pressure the company into an agreement.

The second claim presents more difficulty, and we conclude we must reverse upon the ground that the Act was not intended to reach low level violence committed in connection with bona fide labor disputes

between employers and employees. In this, we try to carefully distinguish this case from one in which acts of extortion are committed to compel an employer to take on unwanted workers (featherbedding) or to pay for work which the worker has no intention of performing. Our research has not led to the discovery of another federal appellate court that has addressed itself to this issue, but a recent district court case seems not inconsistent with our conclusions.[2]

The Hobbs Act was enacted in 1946 to correct what certain members of Congress felt to be an error created by the holding in *United States* v. *Local 807*, etc., 315 U.S. 521 (1942). Congressman Hobbs first introduced his bill two weeks after the filing of the opinion in *Local 807*. That case construed portions of the Anti-rackteering Act of 1934, known as the Copeland Act, 48 Stat. 979 carried forward in 18 USC § 420–a. Local 807 of Teamsters were truck drivers and helpers in New York City. They resented out-of-state drivers coming into New York to make deliveries of goods brought in from other shipping points and they stationed themselves at the entry points connecting New York City to bordering states and stopped trucks seeking to deliver merchandise to New York consignees and by threat and actual use of force and violence ordered the drivers to let a Local 807 man deliver the load from them into the city or pay the union equivalent of a day's wages. If the foreign driver paid the local member, his truck would be taken into the city, unloaded, reloaded and returned to him for the return trip. Often, after he paid the tribute, the foreign driver was compelled to drive his truck into New York himself as the local member would refuse to perform the service even when re-requested to so do.

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[2] *United States* v. *Emmon et al.*, 40 U.S.L.W. 2395 (E.D.La. Dec. 16, 1971), *Petition for cert. filed*, ——— U.S.L.W. ———.

Section 2(a) of the Anti-racketeering Act denounced the person who "in connection with * * * any act * * * affecting trade or commerce—

(a) obtains or attempts to obtain, by the use or attempt to use or threat to use force, violence or coercion, the payment of money or other valuable consideration, or the purchase or rental of property or protective services *not including, however, the payment of wages by a bona fide employer to a bona fide employee.*" (emphasis added).

Local 807 held that persons who offered to perform services for another and who demanded and received union wages for such offer were exempted by Section 2(a) of the Act from criminal liability even though their proffered services were rejected. The Court held that the determining criterion was not whether the victim paid the money with the intent to buy protection but whether the money was demanded without the intention of performing any service. Then the Court concluded that even when it is known that an employer does not need additional workers, violence and threats accompanying a sincere offer to work is not extortion.

Congressional reaction to the *Local 807* decision was immediate and highly vocal. Many members saw the case as giving license to unions to use violence to exact wages as long as the laborer was willing to work. The legislative history of the Hobbs Act shows that the deliberate purpose of Congress was to eliminate Section 2(a) of the Anti-racketeering Act on which *Local 807* turned, so as "to prevent the rendition of that sort of decision by any court in the future * * *." remarks of Congressman Sumners, 91 Cong. Rec. 11, 909 (H.R. Dec. 12, 1945).

By eliminating Section 2(a) however, Congress did not intend to eliminate traditional labor or union activity, albeit militant, which has as its object legitimate

ends. The exclusion was not meant to provide impunity to the terroristic and extortionate activities of union members, but to protect union activity directed toward legitimate labor goals even when militantly pursued. It seems that the *Local 807* decision went beyond the holding it was called upon to reach and beyond the intent of Congress, in condoning a union's engaging in violence as a means of getting wages so long as the union member was willing to work. This could be construed as permitting the use of robbery and extortion to bring about the hiring of unwanted, unneeded employees.

Conduct of this type was judicially frowned upon in *United States* v. *Kemble,* 198 F. 2d 889 (3rd Cir.), *cert. den.* 344 U.S. 893 (1952). The defendant, a member of a New Jersey Truck Drivers Union, was convicted of employing actual and threatened violence against a driver not a member of defendant's local who had brought a load of merchandise by truck to New Jersey from another state. The defendant had sought to make the out-of-state driver hire a local member to unload his truck and pay a day's wages to him at union scale. The Court emphasized that the defendant was using extortion to bring about the hiring of an unwanted employee and held this to be a violation of 18 U.S.C. § 1951. Judge Hastie stated that he felt the Hobbs Act was broad enough to include the forced payment of wages where the money was for "imposed, unwanted and superfluous services such as the evidence shows *Kemble* attempted to enforce here by violent obstruction of commerce * * *" The *Kemble* Court expressly declined to consider whether the Act reached the "normal demand for wages as compensation for services desired by or valuable to the employer." (Page 892).

In *United States* v. *Green,* 350 U.S. 415, 419, the Court held that the use of threats of violence or

violence, either by union members or others, as a means of exacting wages violates the Hobbs Act. *Green* differs from the case at bar in that it dealt with extortion from an employer in the form of wages to be paid employees for imposed, unwanted and superfluous or fictitious services. Following *Green* a series of lower court cases held that extortion occurred when a union member tried to foist himself or another union member on an employer by threats of force and violence. See, *e.g., Callanan* v. *United States,* 223 F. 2d 171 (8th Cir., 1955), *cert. den.* 350 U.S. S. 861 *reh. den.* 350 U.S. 926 (1955); *United States* v. *Sweeney,* 262 F. 2d 272 (3rd Cir. 1959).

Our case involves the issue whether violence employed during the course of a valid, bona fide collective bargaining negotiation can be viewed as extortion within the meaning of the Hobbs Act. We have had urged upon us the argument that often in legitimate labor disputes, tempers grow short, blows are struck on the picket line, and minor but intentional damage is done to the property of the employer. We are also mindful that the damage done Mission's linen in these two instances was trivial when judged in monetary terms.

We turn to the question—did Congress intend to impose a felony conviction with severe penalties upon the union member caught in such byplay while trying to gain larger wages or better working hours and conditions for wanted employees? Certainly this conduct would constitute an offense against the state and would properly be described as an unfair labor practice.

The use of the term "extortion" in the Hobbs Act is based on the definition given the term "extortion" in the New York Penal Code. There the word is defined as ". . . the obtaining of property from another . . . induced by wrongful use of force or

fear . . .". This statute was interpreted in *People* v. *Diaguardi*, 8 N.Y. 2d 260 (1960). The Court of Appeals construed the term "force" as used to define extortion, as including coercion, physical violence, destruction of property and economic loss other than that induced by a lawful strike. In *Diaguardi*, the defendant received payments from the victim company which were, in effect, to buy an end to peaceful organizational picketing. The Court stated:

> "The picketing here * * * may have been perfectly lawful in its inception (assuming it was part of a bona fide organizational effort 'and may have remained so—despite its potentially ruinous effect on the employer's business—so long as it was employed to accomplish the legitimate labor or objectives or organization. Its entire character changed from legality to criminality, however, when it was used as a pressure device to exact the payment of money as a condition of its cessation.'"

Thus the New York Court held that the payment out of fear of economic loss became extortion when the aim and objective of the strike was not merely to secure more favorable terms for the laborer but to exact money as a condition of further economic survival. This principle was followed in *United States* v. *Cramer*, 355 F. 2d 691 (7th Cir. 1966) where a union leader threatened the employer with labor trouble if he was not paid a sum of money, and in *United States* v. *Hyde*, 448 F. 2d 815 (5th Cir. 1971) where the state attorney general and his aide were convicted of a Hobbs Act violation for threatening life insurance and loan companies with state action which could lead to the closing of their businesses unless payments were made to the defendant. The Court there held that the "wrongful use of an official right may be a basis for extortion" page 833.

We pass to the question at hand, whether violence

which is the by-product of the frustration and emotionalism engendered by a prolonged collective bargaining negotiation can be considered extortion as that term is used in the Hobbs Act. A fundamental rule of statutory construction is that criminal statutes must be strictly construed. *United States* v. *Resnick*, 299 U.S. 207, 209 (1936). Last term the Supreme Court said that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis* v. *United States*, 401 U.S. 808, 812 (1971).

Labor unions must be able to actively and vigorously pursue the interest of their members at all times, provided their activity is directed toward legitimate ends. The expansive interpretation of "extortion" used in the Hobbs Act as urged by the Government would make criminal the activities of many militant labor organizations. Under the Government's view, a labor union and its members would be guilty of extortion under Section 1951 if they strike for higher wages in violation of their collective bargaining agreement, because an "illegal" or "wrongful" strike to obtain higher wages constitutes a "wrongful" use of force to obtain the property of another. Spontaneous and sporadic fighting on the picket lines could also be condemned as the use of wrongful force and as extortion if this view was allowed to prevail. This type of action, including the use of violence during a strike, was the subject of congressional attention the year following enactment of the Hobbs Act. The Taft-Hartley Act contained specific provisions which condemned this action as unfair labor practices. See, 29 U.S.C. § 158(b)(2)(A). It is significant that during congressional deliberations on the bill no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress.

If the Hobbs Act was construed to cover acts of violence during the negotiations for a legitimate labor goal we see a further danger that it would permit a union member to be found guilty of extortion for mischievous misconduct even though he did not possess the requisite felonious intent to deprive another of his property. It does not appear that Congress intended for acts of violence which are the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation to be "extortion" within the meaning of the Act. Indeed, in *Local 807* the Government admitted in its brief that "Those who used coercion to secure genuine employment are engaged in a legitimate labor objective; their activities, although perhaps constituting breaches of the peace do not partake of the nature of extortion." *United States* v. *Local 807* at 522–523.

Finally, it appears to us that acts of vandalism of the type committed by these appellants would be more properly and suitably prosecuted in the state courts and it is doubtful if Congress intended by Section 1951 to elevate this type of conduct to the level of the federal court. *See United States* v. *Bass*, ——— U.S. ———, 30 L.Ed. 488 (1971).

We reverse and order the indictment dismissed.

U.S. GOVERNMENT PRINTING OFFICE: 1972

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1193

UNITED STATES OF AMERICA, *Appellant*

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON AND MILTON RAY WOODWARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16(1) of this Court, Appellees respectfully move that the appeal herein be dismissed or that the judgment below be affirmed without further argument.

STATEMENT

Appellees accept the Government's statement of the case. (JS 3-5).[1]

ARGUMENT

I. The Appeal Should Be Dismissed.[2]

a. The Government's thesis on this appeal is that it is a violation of the Hobbs Act, 18 U.S.C. § 1951, punishable by up to 20 years' imprisonment, for members of a labor union to engage in "violence" in pursuit of a legitimate labor

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[1] "JS" refers to the Jurisdictional Statement.

[2] The motion to dismiss is based on Rule 16(1)(d):

"(d) The court will receive a motion to dismiss or affirm on any other grounds which the appellee wishes to present as reasons why the court should not set the case for argument."

It is implicit in the Court's adoption of this Rule to supplement 16(1)(a), (b) and (c) that an appeal may be dismissed even when there is jurisdiction to entertain it.

"Pursuant to Rule 16(1)(d), which was added in the 1967 rule revision, the Court will also receive a motion to dismiss or affirm

objective, namely, to secure "higher wages and other union contract demands." (JS 2.) Endorsement of that "expansive interpretation of 'extortion' used in the Hobbs Act as urged by the Government"[3] is sought in this Court although the Government is unable to point to a single precedent accepting its theory and fails to address itself to the analysis of the Act made by a unanimous Court of Appeals for the Ninth Circuit in *United States* v. *Caldes*[4] which is equally dispositive here.[5]

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containing "any other grounds which the appellee wishes to present as reasons why the court should not set the case for argument." This indicates that an important purpose of a motion to dismiss or affirm is the same as that of a brief in opposition to a petition for certiorari—i.e., to present *all* reasons why oral argument is not justified and why the decision below should not be altered or reviewed, without limitation to jurisdictional defects or lack of substantiality of the questions. It may thus be urged in the motion that the case is not important, or that there is an absence of any conflict of opinions, or that the decision below is so obviously correct as to warrant no further review." Stern and Gressman, *Supreme Court Practice*, 4th ed. 1969, pp. 357-358.

Cf. Ohio v. *Wyandotte Chemicals Corp.*, 401 U.S. 493, 496-497, holding that this Court is not required to exercise even that jurisdiction which is derived directly from Art. III, § 2 of the Constitution.

[3] JS 25a. The quotation is from *United States* v. *Caldes*, 79 LRRM 2598 (9th Cir.) (Jertberg and Eugene A. Wright, C.JJ. and Williams, D.J.), reprinted at JS 17a-26a.

[4] See n. 3, *supra*. *Caldes* was decided on the basis of the most elaborate possible presentation of the Government's position, special leave having been granted the Department of Justice to file a supplemental brief, which contained a full-dress exposition of the arguments which could be mustered in support of the Government's theory.

[5] The Government would limit *Caldes* to its particular facts (JS 9-11). But while the Court of Appeals properly directed its attention to the circumstances of the case before it, its reasoning deals broadly with the "use of violence during a strike" (JS 25a). A few examples will suffice: (1) The Court of Appeals' discussion of the critical term "extortion" as used in the Hobbs Act teaches that the presence of extortion depends not on the *intensity* of coercion, but on the *objective* sought to be achieved thereby (JS 23a-24a). The Court quoted the Government's position in the *Local 807* case and observed that its definition of extortion there was inconsistent with its position here (JS 26a; see also p. 12 *infra*); (2) The Court recognized that, in the year after the Hobbs Act was passed, Congress amended the Taft-Hartley Act to provide that union violence would be unfair labor practice, and regarded it to be "significant that during congressional deliberations on the bill no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress" (JS 25a); (3) The Court rejected the Government's effort to use this Court's carefully narrow decision in *Green* as a precedent for its position in this case (JS 22a-23a; see pp. 6-7 *infra*).

b. Whereas the only two courts that have written on the subject agree that acts of violence in the course of a legitimate labor dispute should be left to the processes of state law (*Enmons*, JS 10a; *Caldes*, JS 26a), the Government's interpretation of the Hobbs Act remains in flux. Originally, and with but a single exception in the first 23 years after the Hobbs Act became law, the Justice Department's position, as evidenced by its practice, was that violence "for the purpose of coercing the employer to consent to higher wages and other union demands" (JS 2) does *not* constitute a violation of the Hobbs Act. Then, in 1970, the indictments here and in *Caldes* were brought on the premise that the Hobbs Act does apply in such circumstances. But the Jurisdictional Statement fails to formulate a definitive position with respect to the Government's new theory:

As appears from its decision to bring the *Caldes* prosecution, the Government originally regarded the degree of violence to persons or property to be irrelevant to its basic theory. Having lost *Caldes*, the Government chooses for present purposes to read the Ninth Circuit's decision as turning on the degree of violence in that case, but nevertheless does not state whether it now believes that minor violence is excluded.

Acknowledging that "often in legitimate labor disputes, tempers grow short, blows are struck on the picket line, and minor but intentional damage is done to the property of the employer" (JS 11), the Government is as yet uncertain ("Perhaps," *id.*) whether the Hobbs Act reaches such conduct.

Finally, there has been a change of theory even within the present prosecution. The indictment herein alleges that defendants committed the violent acts charged "in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits." (JS 14a.) Thus the existence of the objective of securing a better collective bargaining agreement is an essential element of the affirmative case stated in the indictment. The

Government now says that it "could be raised as a *defense* at trial that the acts in question were not intended to coerce the employer * * *." (JS 11, n. 3; emphasis added.)

c. The Government has not gained lower court approval of its construction of the Hobbs Act, and has found no answer to appellate objections which cut to the heart of its theory. Its own position is still at an evolutionary stage. In this posture of the issue, plenary consideration by this Court would be decidedly premature. Important considerations of judicial administration, as envisaged by Rule 16(1)(d) are at stake. In Mr. Justice Frankfurter's words:

> "it suffices to say that experience in instances of similar unclarity under the Criminal Appeals Act counsels the wisdom of abstaining from reviewing construction of a criminal statute on so cloudy a record as is now before the Court. Compare United States v. Colgate & Co., 250 U.S. 300, with United States v. A. Schrader's Son, Inc., 252 U.S. 85."[6]

In short, the Government's interpretation of the Hobbs Act has ramifications which go well beyond the present indictment and involves complexities which the Justice Department itself has not resolved. Yet it is thrust upon this Court in a form and at a time least conducive to sound adjudication.[7] Vindication of this Court's processes there-

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[6] *United States* v. *Fruehauf*, 365 U.S. 146, 158.

The example of the *Colgate* case is indeed instructive. As this Court later observed, the "Colgate decision created some confusion and doubt as to the continuing vitality of the principles announced in Dr. Miles" (an earlier antitrust case), *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 38. The immediate consequence was *Schrader's Son*, *supra*, where this Court found it necessary to reverse a district court because it had "misapprehended the meaning and effect of the opinion and judgment in" *Colgate*, 252 U.S. 85, 90. Yet notwithstanding *Schrader's Son* (another criminal appeal) widespread confusion as to the scope of *Colgate* persisted for forty years, as is described by the sharply conflicting opinions in the *Parke, Davis* case, *supra*.

[7] This was not a matter of necessity, since the Government could have sought certiorari in *Caldes*, where the statutory question was presented in the context of a full record after trial. While it suits the Government's litigation strategy in this case to distinguish, rather than confront, *Caldes*, the Government does not acknowledge that *Caldes* was rightly decided even on the Government's own narrow reading. See page 3, *supra*.

fore requires that the appeal be dismissed. To be sure, the Government would lose the present prosecution; the necessary consequence of any dismissal pursuant to Rule 16(1)(d) is that the judgment of the court below remains undisturbed.[8] But the rational development of the law under the Hobbs Act will be safeguarded. Because dismissal does not constitute a determination on the merits, the Government would remain free to pursue its theory in other cases and to refine it in the fires of litigation. Appellate consideration would be assured for the Criminal Appeals Act, as amended, now provides for an appeal to the court of appeals from an order dismissing an indictment on statutory grounds.[9] If the Government's position should prove to have sufficient merit to commend itself to any court of appeals, the conflict with *Caldes* would then bring the issue to this Court in a setting conducive to informed deliberation.

These considerations of judicial administration would be overweighed if the decision below were clearly wrong or aberrational. Rather, as is shown below, what the Jurisdictional Statement unwittingly reveals is that there is so little substance to the Government's theory that if the merits are reached, summary affirmance would be appropriate.

II. Alternatively, The Judgment Below Should Be Affirmed Without Further Argument.

The Hobbs Act proscribes interference with interstate commerce "by robbery or extortion." As this Court noted

[8] Concededly, the Court of Appeals for the Fifth Circuit would not have jurisdiction to consider the instant case pursuant to the remand procedure contained in pre-amended 18 U.S.C. § 3731, since that procedure does not apply where jurisdiction under that statute does lie in this Court, such jurisdiction being exclusive (see *United States* v. *Mersky*, 361 U.S. 431, 434).

[9] When the revision of the Criminal Appeals Act was being considered by Congress, it was emphasized that unless a ruling clearly raised problems as to the constitutionality of a Federal criminal statute, there was no good reason why Government appeals in criminal cases should not be taken first to the courts of appeals. Among other things, it was suggested that the Supreme Court "benefits significantly by having not only the instant case before it, but also from having a range of related appellate opinions from various courts of appeals." S. Rep. No. 91-1296, 91st Cong., 2d Sess. 15. See also *Id.* at 13-14, 17, 29-36; 116 Cong. Rec. 35658-35660 (1970).

in *United States* v. *Green*, 350 U.S. 415, 418-19, the Act was passed as a response to this Court's construction of Section 2 of the Federal Anti-Racketeering Act of 1934,[10] in *United States* v. *Local 807*, 315 U.S. 521, where,

> "We held in Local 807 that this exception covered members of a city truck drivers' union *offering superfluous services* to drive arriving trucks to their city destination with intent, if the truck owners refused their offer, to exact the wages by violence." *United States* v. *Green*, 350 U.S. at 419. (Emphasis added.)

As the Court stated in *Green*, "the Hobbs Act was meant to stop *just such conduct*" (350 U.S. at 420) (Emphasis added). Whereas, the 1934 Act had been limited in its application, in a labor context, to faithless union officials who utilized either violence, strikes or picketing—or threats thereof—for their personal enrichment (350 U.S. at 420), *Green* held that under the amendatory Hobbs Act, "extortion as defined in the statute in no way depends upon having a direct benefit conferred on the person who obtains the property." (350 U.S. at 420.)[11]

Despite the Government's contention (JS 5), it is not even seriously arguable that *Green* is inconsistent with the decision of the court below. Green was indicted for attempting to obtain "money, in the form of wages to be paid for imposed unwanted, superfluous and fictitious services" (350 U.S. at 417), which as recognized by the Court (350 U.S. at 420) was precisely the type of conduct involved in the *Local 807* case. The Court stated (350 U.S. at 421):

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[10] 48 Stat. 979. "Subsection (a) of § 2 [of the 1934 Act] barred, with respect to interstate commerce, exaction of valuable considerations by force, violence or coercion, 'not including, however, the payment of wages by a bona-fide employer to a bona-fide employee.'" 350 U.S. at 418-19.

[11] The Government's assertion that the decision below "severely curtails the reach of the Hobbs Act by limiting its ban on extortionate conduct directed against employers to situations where wages are sought for superfluous and unwanted labor" (JS 5), is anomalous. Clearly, the decision below has no effect on the traditional anti-racketeering prosecution involving personal enrichment. E.g., *United States* v. *Kramer*, 355 F.2d 891 (7th Cir.); *United States* v. *Provenzano*, 334 F.2d 678 (3d Cir.); *United States* v. *Palmiotti*, 254 F.2d 491 (2d Cir.).

"We rule only on the allegations of the indictment and hold that the acts charged against appellees fall within the terms of the Act."

Of course, "the new [Hobbs] Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship." 350 U.S. at 419, quoted at JS 6. As discussed *supra*, *Local 807* had held that the Anti-Racketeering Act did not cover this relationship in *any circumstances*. In the Hobbs Act Congress established that *some* aspects of that relationship were to be covered; but it by no means follows, as the Government fallaciously assumes (JS 7), that *all* are.

The second paragraph of the Government's quotation from *Green* [12] on its face deals solely with the applicability of Title II of the Act (now embodied in U.S.C. § 1951(c)) which is, in effect, a proviso to the prohibition contained in Title I (18 U.S.C. § 1951(a) and (b)(2)). Appellees here do not rely on that proviso, but rather on the proposition that the acts charged in the indictment are not within the prohibition—in a word, that they do not constitute "extortion" for the reasons expressed above. As the Third Circuit has observed: "The exemption of certain labor union activities from the coverage of the act can be found in two places." *United States* v. *Sweeney*, 262 F. 2d 272, 276 n. 4. The "two places" are § 1951(c) and the definition of "extortion" in § 1951(b)(2).

The expressly enunciated narrowness of the holding in *Green* properly reflects the clear legislative intent. As originally proposed by Congressman Hobbs in 1942,[13] the Act would have carried over the language from the 1934 Act proscribing the obtaining "by the use of force, violence, or coercion, money or other valuable consideration" but without the exception upon which the *Local 807* case had turned.[14] At the hearings, representatives of labor criti-

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[12] JS 7.

[13] H.R. 6872, 77th Cong., 2d Sess.

[14] Hearings before Subcommittee No. 3 of the House Committee on the Judiciary, 77th Cong., 2d Sess. 4.

cized this language on the ground, among others, that it would apply not only to racketeering activities but to violence committed in the course of a collective bargaining dispute.[15] Even at this point in the bill's consideration, Hobbs was clear as to the limited application of his bill in the employer-employee context:

> "But what we are talking about here is where the *employment* is by duress or coercion. And that is all that the bill provides for." (Emphasis added.)[16]

In committee, the language of the bill was changed by Hobbs to its present form to make this intent perfectly clear. Thus, the reported bill omitted the language concerning "valuable consideration" and expressly proscribed "extortion" in terms identical to that in the Hobbs Act.[17] In his speech on the floor of the House, immediately prior to passage, Hobbs stated:

> "Now I want to say just a word about the law of this case. They ask: Why is this bill written the way it is? I will tell you why. Because the most distinguished lawyers that labor can employ some say at $50,000 each per year came before our Committee, men like the Honorable Joseph A. Padway came down to testify before us. I asked him: 'If this bill were rewritten so as to outlaw interference with interstate commerce by robbery or extortion, would you favor it?' He said: 'Why certainly I would; any honest man would favor that.'
>
> "So we rewrote the bill. This is not the bill upon which we held hearings. We held hearings upon a bill [H.R. 6872] very much like this old Copeland Act which would be if you adopt the LaFollette amendment which is to be offered. That was the bill we held hearings on. But when Mr. Tuttle of New York and Mr. Carson, General Counsel of another union, and all of labor's

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[15] *Id.* at 127, 234.
[16] *Id.* at 224-25.
[17] H. Rep. No. 238, 79th Cong., 1st Sess.

chosen spokesmen said that if we rewrote the bill and preserved the right to the four branches of labor's Magna Carta—and we did so—*and if we would just limit it to interference with interstate commerce by robbery or extortion* that would be all, they would all, they would all be for it. We rewrote the bill in its present form. While they have said a word since, they have not come here and inveighed against this bill because they knew that they wrote it themselves. They knew that Title I and Title III were rewritten at their dictation in our committee room virtually. That is why they have not been here." 91 Cong. Rec. 11912. (Emphasis added.)

It is, therefore, crystal clear that the Hobbs Act—tailored to overcome labor's objections and approved by the President [18]—was a statute directed by Congress solely at racketeering, including the kind of "employment by duress" situation involved in the *Local 807* case, and was not intended to apply to violence committed in the course of negotiation of a collective bargaining contract between an employer and the duly authorized representative of his employees for higher wages for services desired by said employer.

The Government sets out a single colloquy during the legislative debates in support of its construction of the Hobbs Act (JS 7-8). But the true import of that colloquy, once Congressman Michener's entire remark is reproduced, is that Congress sought only to reverse the particular result of the *Local 807* case:

"Mr. MICHENER. That is all there is to it. The only way labor is involved is that if these offenders belong to the union, and by robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a legitimate union activity. *Mr. Speaker, I cannot under-*

[18] It will be recalled that in 1946 and 1947 President Truman vetoed the Case bill and the Taft-Hartley Act, respectively, on account of labor's objections thereto.

> *stand how any union man can claim that the conduct described by Mr. Justice Stone is a legitimate union activity. I have confidence that most of the rank and file of labor and my congressional district will so claim.* 91 Cong. Rec. 11843-11844. (Emphasis supplied to show portion omitted in Jurisdictional Statement.)

The conduct described by Mr. Justice Stone in his opinion in the *Local 807* case was that:

> "[The defendants], or some of them, lay in wait for trucks passing from New Jersey to New York, forced their way onto the trucks, and by beating or threats of beating the drivers procured payments to themselves from the drivers or their employers of a sum of money for each truck, $9.42 for a large truck and $8.41 for a small one, said to be the equivalent of the union wage scale for a day's work. In some instances they assisted or offered to assist in unloading the truck and in others they disappeared as soon as the money was paid without rendering or offering to render any service." 315 U.S. at 539.

And Mr. Justice Stone was careful to distinguish between such conduct, which he believed was forbidden by the Federal Anti-Racketeering Act, and union violence directed at legitimate labor objectives:

> *"Even though the procuring of jobs by violence is not within the Act,* and though this includes the 'stand-by' job where no actual service is rendered, the granted immunity, unless its words be disregarded, does not extend to the case where the immediate objective is to force the payment of money regardless of the victim's willingness to accept and treat the *extortioner* as an employee." Id. at 541. (Emphasis added.)

Thus, the legislative history lends no substance whatever to the Government's present construction of the Hobbs Act. And at least equally significant is "what Congress did not say." *Rewis* v. *United States,* 401 U.S. 808, 811-12. There is not a word in the legislative history which suggests that violence in the course of bona fide collective bargaining

negotiations was intended to be covered. This is particularly striking in light of the statement by the Court of Appeals for the Third Circuit "that some disorder is unfortunately quite usual in any extensive or long drawn out strike."[19] If that had been the target aimed at, surely the Committee report would have so indicated, or one of the sponsors would have so stated in the debates, giving as an example of the need for the bill some recent and notorious violent strike. To contend that Congress intended to subject union members who uttered threats or engaged in violence during an ordinary strike for wages to the extremely severe penalties prescribed in the Act, while avowing that it was only clarifying an anti-racketeering law, is a tacit slander of the legislative process.

Silence in the Act's *administration* is also highly persuasive. *United States* v. *Laub*, 385 U.S. 475, 485; *cf. Norwegian Nitrogen Products* v. *United States*, 288 U.S. 294. Before 1970 when the indictments herein and in *Caldes* were returned, there was only a single prosecution under the Government's present theory. That case was brought in 1962, and the one defendant who was tried under the Hobbs Act was acquitted. *United States* v. *George Samuel Webb* (N.D. Ala., No. 15080). In the twenty-five years since the Hobbs Act became law, there have been countless labor disputes in which there was some violence to persons or property; in some the strike was notorious and the violence serious. These events could hardly have escaped the attention of the United States Attorneys in the areas in which the strikes occurred or of the Justice Department. Many of them became matters of public notice additionally because they resulted in litigation either before the courts or the National Labor Relations Board. Yet no Hobbs Act prosecutions were instituted.[20]

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[19] *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F.2d 472 (3d Cir.), *cert. granted in part*, 310 U.S. 655, *modified on another point*, 311 U.S. 7.

[20] In one case of strike violence where a federal criminal prosecution was brought (on violence no less serious than that charged in the present indictment), the Government charged only a conspiracy to violate 18

Finally, the unsubstantiality of the Government's present construction of the Hobbs Act is shown by its necessity to invent "the concept of extortionate force" (JS 9). This phrase, like "extortionate means" (JS 7), appears to have been conceived for the purposes of this litigation to give the impression that the offense of extortion depends upon the degree of force employed, rather than its objects.[21] The argument was rejected in *Caldes* where it was first advanced (JS 23a-24a) and is without roots in the law of extortion as it has previously been understood. Rather, that understanding is reflected by the Government's argument to this Court in the *Local 807* case:

> "If the defendants had been seeking to achieve a legitimate labor objective, we doubt whether their activities would come within the scope of the Act simply because of the presence of violence. The whole tenor of the Act indicates that Congress intended to punish activities similar to extortion; *violence used as a means of obtaining a lawful labor union objective is not extortion but simply a breach of the peace or other kindred unlawful act.*" Brief for the United States, Nos. 131-132, O. T., 1941, p. 46. (Emphasis added.)[22]

U.S.C. § 1362 (destruction of means of communication) which carried a maximum penalty of five years; no count was included under the Hobbs Act, which reaches conspiracies and bears a penalty of twenty years. See *Abbatte* v. *United States*, 359 U.S. 187, 189.

[21] Neither of the two cases cited by the Government involved the issue, and the courts did not discuss, whether the Hobbs Act applies where proscribed *means* are employed in furtherance of a *legitimate objective*. Rather, both cases involved illegitimate objectives, and, indeed, plain common racket extortions. Thus, in *Battaglia* v. *United States*, 383 F. 2d 303 (9th Cir.), violence was employed to coerce the victim to enter into an unwanted business relationship with the defendant, an objective reminiscent of the employment by duress objective involved in *Local 807* and *Green*. In *United States* v. *Tropiano*, 418 F. 2d 1069 (2d Cir.), threats of violence were employed to force the victim to cease engaging in competitive business. Of course, as the Government concedes, neither case involved collective bargaining, or labor relations in any form.

[22] The implications of the Government's position in the instant case further reveal the unsubstantiality of such position. As the Ninth Circuit in *Caldes* recognized, "Under the Government's view, a labor union and its members would be guilty of extortion under Section 1951 if they strike for higher wages in violation of their collective bargaining agreement" (JS 25a). While such activity would be subject to certain federal

As we have shown, the Hobbs Act was adopted in response to the *Local 807* case and adopted the concept of "extortion" to allay the fears of the labor movement that the Act would be given an expansive interpretation. It is, therefore, inconceivable that the Act was intended to cover the activity charged in the indictment in this case, which the Government's own brief in the *Local 807* case declared "is not extortion."

Conclusion

For the foregoing reasons, the appeal should be dismissed or the judgment below should be affirmed without further argument.

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April 1972

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civil remedies, obviously it has never been considered to be "extortion" under the Hobbs Act.

The Government's effort (JS 10-11) to read *Caldes* as ruling only that minor violence is not an "extortionate means" would produce another strange consequence. The Ninth Circuit ruled (JS 19a) that the jury could logically conclude that "the violence was *intended* to pressure the company into an agreement." (Emphasis added.) If no distinction is to be made between legitimate and illegitimate objects, it would follow that minor violence intended for personal enrichment of faithless union officials (see cases cited at p. 6 n. 11, *supra*) would not be subject to the Hobbs Act—an absurd result which proves the unsound nature of the Government's theory.

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, APPELLANT

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON AND MILTON RAY WOODWARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (App. A, pp. 1a-10a)[1] is reported at 335 F. Supp. 641.

JURISDICTION

The judgment of the district court dismissing the indictment was entered on January 6, 1972 (App. B, p. 11a). On January 14, 1972, a notice of appeal to this Court was filed under 18 U.S.C. 3731 (1964 ed.),

[1] All "App." references are to the Appendix to the government's Jurisdictional Statement.

since the district court's dismissal of the indictment was based upon its construction of the underlying statute. See *United States* v. *International Minerals and Chemical Corporation*, 402 U.S. 558; *United States* v. *Fabrizio*, 385 U.S. 263. This Court noted probable jurisdiction on May 15, 1972.[2]

QUESTION PRESENTED

Whether an agreement by union officers and members to commit unlawful acts of violence, made during the course of a lawful strike against an employer engaged in interstate commerce and for the purpose of coercing the employer to consent to higher wages and other union contract demands, constitutes a violation of the Hobbs Act, 18 U.S.C. 1951.

STATUTE INVOLVED

The Hobbs Act, 18 U.S.C. 1951, provides in pertinent part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this sec-

[2] The 1971 amendment to the Criminal Appeals Act (18 U.S.C. 3731), providing that all appeals from dismissals of indictments or informations must be taken to the courts of appeals, 84 Stat. 1890, is not applicable to this case. The amendment is effective only as to cases begun in the district courts after its effective date, January 2, 1971; the present indictment was returned in October 1970. See *United States* v. *Jorn*, 400 U.S. 470, 474 n. 1, 477–478 n. 6.

tion shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

* * * * *

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means * * * all commerce between any point in a State * * * and any point outside thereof * * *.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45.

STATEMENT

On October 15, 1970, a one-count indictment was returned in the United States District Court for the Eastern District of Louisiana charging appellees with conspiracy to violate the Hobbs Act by engaging in acts of violence and destruction of property while the International Brotherhood of Electrical Workers ("IBEW") and Gulf States Utilities Corporation ("Gulf States") were negotiating a new collective bargaining agreement. The indictment (App. C) alleged that, between October 30, 1969, and June 2, 1970, Gulf States, as part of an electrical network serving several states, was in the business of furnishing electricity to communities in Louisiana and Texas; and that articles and materials necessary for the construc-

tion and maintenance of its facilities moved in interstate commerce.

According to the indictment, the employees of Gulf States were represented by Local 2286 of the IBEW. One appellee (Barton) was an officer of this Local. Some of the subcontractors employed by Gulf States were represented by Local 390 of the IBEW. Two of the appellees (Enmons and Bendo) were officers of this Local; the other (Woodward) was a member. The indictment charged that the four appellees conspired among themselves and with other unindicted co-conspirators (App. C, pp. 13a–14a):

> * * * to obstruct, delay, and affect commerce * * * and the movement in commerce of electrical energy and other articles and commodities by extortion * * * and to commit physical violence to property in furtherance of said plan to obstruct, delay and affect commerce.
>
> It was a part of said conspiracy that the [appellees] and co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said [appellees] and co-conspirators, in that [appellees] and the co-conspirators, did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits.

It was also alleged that, in furtherance of the conspiracy, appellees, or persons acting at their direction, committed five acts of violence against the property of Gulf States, including blowing up one transformer substation, firing at three other transformer substations with high powered rifles, and draining oil from transformers to cause malfunctions in the equipment (App. C, pp. 14a–15a).

Appellees filed a motion to dismiss the indictment as not charging an offense under the Hobbs Act. Following a hearing, the motion was granted. The district court stated (App. A, p. 8a): "We find no case where a court has gone so far as to hold the type of activity involved here to be a violation of the Hobbs Act."

The court deemed critical the fact that the increased wages and other monetary benefits sought to be obtained from the employer were for genuine and desired services. This, according to the court (*ibid.*), was the principal factor which distinguished the present case from the situation where "the wages sought by violent acts are wages to be paid for unneeded or unwanted services, or for no services at all." In such a situation, the court recognized (*ibid.*), the acts of violence and destruction to property would constitute extortion prohibited by the Hobbs Act.[3] Here, however, it held that, since the acts of violence were in furtherance of a legitimate end, *i.e.*, obtaining higher wages for needed and desired services, they were not

[3] The Court cited *United States* v. *Kemble*, 198 F. 2d 889 (C.A. 3), certiorari denied, 344 U.S. 843, as "good authority" for this proposition (App. A., p. 8a).

proscribed by 18 U.S.C. 1951. As the court below construed the statute (App. A, p. 9a), "neither the wages of bona-fide employees nor the 'right to negotiate employment contracts—without illegal disruption' constitute 'property' as contemplated by the Hobbs Act."

SUMMARY OF ARGUMENT

In dismissing the indictment in this case, the court below adopted an erroneous construction of the Hobbs Act. On the one hand, it recognized that where violent acts are utilized to obtain wages for "unneeded or unwanted services" (App. A, p. 8a), they can properly be condemned as extortionate conduct within the proscription of the federal statute. Yet, it then held that the very same conduct—or worse—cannot be reached under the Hobbs Act so long as such violence during a *bona fide* labor dispute is directed simply at securing higher wages for existing employees holding down necessary jobs. This distinction between services that are wanted and those that are unwanted finds no support in the language of the statute or its legislative background. It is, moreover, at odds with the essential thrust of this Court's decision in *United States* v. *Green*, 350 U.S. 415. Congress did not intend that extortion to achieve higher wages be treated differently from extortion to achieve featherbedding; the statute was designed to outlaw both.

ARGUMENT

THE PROHIBITIONS OF THE HOBBS ACT REACH MEMBERS OF LABOR UNIONS WHO EMPLOY EXTORTIONATE FORCE DURING A LAWFUL LABOR DISPUTE TO COERCE THE EMPLOYER TO CONSENT TO HIGHER WAGES AND OTHER MONETARY BENEFITS

The decision of the district court in this case curtails the reach of the Hobbs Act by limiting its ban on extortionate conduct directed against employers to situations where wages are sought for superfluous and unwanted services. The statute on its face does not warrant such a narrow reading; those who enacted the legislation did not intend it to be so circumscribed; and, but for the decision below and perhaps one other (see pp. 19–20, *infra*), the courts apparently have heretofore not adopted such a limitation on the Act's coverage.

A. *The Statutory Language*

By its terms, the Hobbs Act, 18 U.S.C. 1951(a), reaches "[w]hoever in any way or degree obstructs, delays, or affects commerce" either by "robbery or extortion" or by using or threatening "physical violence to any person or property in furtherance of a plan or purpose" to rob or extort. The term "extortion" is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)).

This language is free from ambiguity and without qualification. Unlike its forerunner, Section 2 of the Anti-Racketeering Act of 1934, 48 Stat. 979,[4] the Hobbs Act does not exempt from its intentionally broad coverage (see pp. 13–19, *infra*) a "person who * * * [o]btains or attempts to obtain * * * the payment of wages from a bona-fide employer to a bona-fide employee" (see Section 2(a) at n. 4, *supra*). Compare *United States* v. *Local 807*, 315 U.S. 521.[5] This Court, in *United Sates* v. *Green*, 350 U.S. 415, n. 5, recognized that the elimination in 1946 of the above-

[4] Prior to being amended by the Hobbs Act in 1946, Section 2 covered:

> Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—
>
> (a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or
>
> (b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b) * * *.

[5] In *Local 807*, the Court held that members of a city truck-drivers' union, who had sought by threat of violence to procure wages from their employers for superfluous service, were explicitly exempted from coverage under Section 2 of the 1934 Act by the language quoted above.

quoted qualifying language of the earlier statute was a direct response to the Court's decision in *Local 807*. In considering the reach of the Hobbs Act amendment, it said (350 U.S. at 419; footnote omitted):

> * * * In the Hobbs Act, 60 Stat. 420, carried forward as 18 U.S.C. § 1951, which amended the Anti-Racketeering Act, the exclusion clause involved in the *Local 807* decision was dropped. The legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding.

Accordingly, the Act covers attempts by union employees and officials through force or violence to obtain, with induced consent, "property" of an employer engaged in interstate commerce. The language nowhere suggests an exception in the area of labor relations where the "property" so taken, or sought to be taken, from the employer is the money equivalent of earned wages. The special exclusion for "wages paid * * * to a bona-fide employee" contained in the provision of the 1934 Act defining the term "property, money or valuable considerations,"[6] was explicitly deleted from the Hobbs Act. Thus, the fact

[6] Section 3 of the 1934 Act provided: "The terms 'property', 'money', or 'valuable considerations' used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee."

that the payment allegedly extorted here took the form of higher wages does not except it from the Act's coverage.

Money in the form of earned wages, moreover, does not lose its character as "property" depending on the extortionists' underlying purpose for exacting payment. Contrary to the district court's suggestion (App. A. pp. 8a-9a), higher wages obtained for wanted services through threats or acts of violence stand on no different footing under the Hobbs Act than wages for unwanted services similarly obtained. The employer in both cases is subjected to pressure through fear of harm to his person or property to hand over money with which he would not have otherwise parted. This is the very evil that the inclusive statutory language was designed to reach, *i.e.*, "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)).

United States v. *Green, supra,* also answers any contention that the Hobbs Act applies solely to extortion that benefits the extortioner, but not to extortion that benefits only third persons, here the members of the union. In describing as "erroneous" the holding of the district court in that case that "the charged acts would be criminal only if they were used to obtain property for the personal benefit of the union or its agents, in this case Green," the Court flatly ruled that "extortion as defined in the statute in no way depends upon having a direct benefit conferred on the

person who obtains the property" (350 U.S. at 420). Furthermore, we disagree with the court below (App. A, pp. 9a–10a) that implicit in the broad statutory language is a special immunity for union employees and officials if the wages they have sought to obtain by unlawful extortionate means could have been sought, and perhaps obtained, by lawful means. Such a view cannot be squared either with the Hobbs Act or with similar prohibitions elsewhere in the criminal law. The fact that money may be obtained through skilled bargaining or through forms of moral or other "coercion" which the law permits is no excuse for obtaining the same money at gun point. Similarly, the fact that a demand by a union officer might be lawfully asserted during collective bargaining negotiations furnishes no justification for the attempt to accomplish the same end through the use of force or violence or the threat thereof.

This Court's decision in *United States* v. *Green, supra,* apparently recognizes this principle. While the indictment in that case charged the extortion of wages for superfluous and unwanted labor services,[1] the district court (135 F. Supp. 162) held that union demands for payment to employees for performing

[1] The *Green* indictment charged a local union and its members with acts of extortion against an employer in an attempt to force him to consent to a union contract for certain maintenance work, and thereby obtain "his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers * * *" (350 U.S. at 417).

"made work" were not, under this Court's featherbedding decisions (see *American Newspaper Publishers Association* v. *National Labor Relations Board*, 345 U.S. 100; *National Labor Relations Board* v. *Gamble Enterprises*, 345 U.S. 117), unfair labor practices. In this Court, that aspect of the lower court's decision in *Green* was not disputed (350 U.S. at 418). The fact, however, that the same objective which the union employees and officials in *Green* sought to obtain through threatened and actual force could have been sought, and perhaps obtained, lawfully at the bargaining table, did not remove them or their conduct from the Act's coverage. An otherwise benign motive of fostering legitimate labor union objectives is no excuse under the Hobbs Act for using methods constituting extortion or robbery to achieve that end.

In contexts outside the field of labor relations, it has been recognized that the proscription in the Hobbs Act on extortionate conduct applies not merely to the wrongful use of force and threats in seeking illegitimate ends, but also has equal application to actual and threatened force for the purpose of attaining legitimate ends. In *Battaglia* v. *United States*, 383 F. 2d 303 (C.A. 9), certiorari denied, 390 U.S. 907, the Ninth Circuit affirmed a Hobbs Act conviction based on a demand for the use of the victim's business establishment as a location for the defendant's coin-operated pool table—a demand which would not have been subject to criminal sanction if enforced by legitimate business pressures rather than by threats of violence. Similarly, in *United States* v. *Tropiano*, 418

F. 2d 1069 (C.A. 2), certiorari denied, 397 U.S. 1021, the Second Circuit held that the wrongful use of threats to obtain the right to solicit business constituted extortion. And see *United States* v. *Glasser*, 443 F. 2d 994 (C.A. 2), certiorari denied, 404 U.S. 854, involving the unlawful use of force by officers of a glassworkers' union to obtain the use of union glaziers.

Nothing in the Hobbs Act itself or its legislative history (see pp. 14–19, *infra*) suggests that any different rule was contemplated for members of labor unions. But that is precisely the effect of the district court's construction of the statutory language as covering in the field of labor relations only extortionate conduct aimed at obtaining wages in payment for unwanted, as opposed to wanted, services. Such a restrictive reading is, we submit, contrary to both the letter and the spirit of the Act.

B. *The Legislative Framework*

The legislative history of the Hobbs Act shows that Congress intended the statutory language to sweep as broadly as the written words suggest. We have already noted this Court's observation in *United States* v. *Green*, *supra*, 350 U.S. at 418–419, that the basic reason leading to enactment of the provisions involved here was the *Local 807* decision (315 U.S. 521), construing Section 2 of the Anti-Racketeering Act of 1934, 48 Stat. 979–980, which contained an exception to the prohibition against exaction of valuable considerations by force or violence for "the payment of wages by a bona-fide employer to a bona-fide employee." This exclusionary clause was held in *Local*

807 to protect from federal prosecution union members who engaged in threats or acts of violence to coerce employers to meet union wage demands.

Following the decision, Congress quickly moved to amend the 1934 Act, in order in the words of Representative Gwynne of the House Judiciary Committee (89 Cong. Rec. 3201) "to rewrite the law and leave out that exception on which the Supreme Court decision is based." A number of bills were introduced in both the House and Senate; all had as a common objective to extend the Anti-Racketeering Act's coverage to "the employer-employee relationship" (*United States* v. *Green, supra,* 350 U.S. at 419). The statement of Congressman Hobbs, first made when he introduced an early version of what came to be known as the Hobbs Act (89 Cong. Rec. 3217) and later repeated when he submitted the bill that was eventually enacted into law (91 Cong. Rec. 11912), aptly reflects the general mood of the legislators:

> This bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card. It covers whoever in any way or degree interferes with interstate or foreign commerce by robbery or extortion.
>
> * * * * *
>
> This bill is drawn in response to the challenge of the following quotation from the majority opinion [in *Local 807*]:
>
> "This does not mean that such activities are beyond the reach of Federal legislative control. Nor does it mean that they need go unpunished."

The proponents of the legislation made it clear that they intended the statute to have broad coverage.[8] As stated during debates on the floor of the House (91 Cong. Rec. 11843–11844):

> MR. SUMNERS of Texas: There is nothing in this bill dealing with persons connected with organized labor as such. It is just an attempt on the part of the Committee on the Judiciary to bring in a bill that will prevent this type of robbery in interstate commerce.
>
> MR. MICHENER: That is all there is to it. The only way labor is involved is that if these offenders belong to the union, and by robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a legitimate union activity. * * *
>
> MR. ROBINSON of Kentucky: Just one other point on that. It does not apply to labor unions alone, it applies to any group of men that are interfering with interstate commerce, whether they be labor unions, farm organizations, or anybody else.
>
> MR. MICHENER: Why, of course. All are treated alike and no group is given special per-

[8] See 91 Cong. Rec. 11841 (remarks of Rep. Cox); 91 Cong. Rec. 11844 (remarks of Rep. Hoffman); 91 Cong. Rec. 11900 (remarks of Rep. Hancock); 91 Cong. Rec. 11901 (remarks of Rep. Hobbs); 91 Cong. Rec. 11903, 11904 (remarks of Rep. Gwynne); 91 Cong. Rec. 11905 (remarks of Rep. Robson); 91 Cong. Rec. 11907 (remarks of Rep. Fellows); 91 Cong. Rec. 11909 (remarks of Rep. Vursell); 91 Cong. Rec. 11910–11911 (remarks of Rep. Springer); 91 Cong. Rec. 11913 (remarks of Rep. Whittington); 91 Cong. Rec. 11918 (remarks of Rep. Baldwin).

mission to violate the law. Labor should not ask for such exception.

Similar views were expressed by Congressman Whittington, speaking in support of the bill that was eventually passed (91 Cong. Rec. 11913):

> The bill is to prevent a repetition of the physical violences by members of labor unions on those engaged in interstate commerce. * * *
>
> * * * * *
>
> The pending bill will provide for punishing racketeers who rob or extort. There is no justification for labor unions opposing the bill as it constitutes no invasion of the legitimate rights of labor. Robbery and extortion by members of labor unions must be punished. Labor unions owe that much to the public. In demanding the protection of laws, labor unions should urge that those engaged in legitimate interstate commerce be protected from robbery and extortion.

There were, to be sure, those who objected to the proponents' sweeping response to *Local 807*. They recognized that by simply deleting the exception contained in the 1934 Act, the protection it once afforded to labor would be *totally* eliminated, whether the wrongful use of force and threats was designed to achieve illegitimate ends, *i.e.*, payment for superfluous services as in *Local 807*, or was aimed at attaining objectives considered to be legitimate, *i.e.*, higher wages for wanted services as in the present case. Thus, Representative Marcantonio admonished that repeal of the exclusionary clause would "* * * leave the field now wide open for the prosecution of labor

for any activity * * *" (91 Cong. Rec. 11918). Others voiced a like concern. See 91 Cong. Rec. 11846, 11919–11920 (remarks of Rep. LaFollette); 91 Cong. Rec. 11901–11903, 11905, 11913 (remarks of Rep. Celler).

During the floor debate, Representative Celler attempted to insert in the bill an exception for cases where the payment sought to be exacted through violence or threats of violence was "wages paid by a bona-fide employer to a bona-fide employee" (91 Cong. Rec. 11913). Representative Hobbs, speaking in opposition to this amendment, argued (91 Cong. Rec. 11914) that it was "substantially the same as [the exception in the 1934 Act] * * *"; similar objections were made by Representatives Russell (91 Cong. Rec. 11914), Walter (91 Cong. Rec. 11914–11915) and Baldwin (91 Cong. Rec. 11918), and the Celler amendment was rejected (91 Cong. Rec. 11919).

Representative LaFollette then offered an amendment which would have continued the 1934 exception in substantially the same form but would have redefined the phrase "payment of wages by a bona-fide employer to a bona-fide employee" so as to make the Act cover any payments made in response to force or violence. While this proposal preserved at least some of the protection accorded to labor under the original exclusionary clause (though severely restricted), and at the same time went a long way toward meeting the principal objective of the bill's proponents—*i.e.*, "to prevent a recurrence of what happened in the Supreme Court opinion [in *Local 807*]" (91 Cong. Rec. 11919, remarks of Rep. La-

Follette)—it, too, was voted down (91 Con. Rec. 11921). As Representative Gwynne pointed out in opposition to the change (91 Cong. Rec. 11920), "it would constitute an open invitation to the Supreme Court to decide that case the same, if it should come before them again * * *."

The House then passed the legislation in its present form (91 Cong. Rec. 11922). Six months later the Senate, without discussing *Local 807* or the exclusion clause in the earlier statute, took similar action (92 Cong. Rec. 7308).

As this survey of the legislative history demonstrates, the proponents of the Hobbs Act successfully resisted virtually all efforts to include qualifying language that might suggest a limitation on the Act's applicability in the area of employer-employee relations. The only concession to the opponents of the statute was the insertion of Section (c), enacted to dispel any notion that labor statutes already in force, which protected the legitimate method of striking to obtain higher wages would be in any way abrogated or weakened.[9] But, as this Court stated in *United States* v. *Green, supra*, 350 U.S. at 420, that savings clause did not curtail the reach of the statute: "There is nothing in any of those Acts * * * that indicates any protection for unions or their officials in attempts to get personal property through threats of force or

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[9] 18 U.S.C. 1951(c) provides: "This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45."

violence. These are not legitimate means for improving labor conditions."

C. *The Hobbs Act Reaches Cases Like This One*

Both the statutory language and the legislative history thus leave no doubt, we submit, that Congress framed the Hobbs Act to reach just the sort of activity which is alleged in the present indictment (see pp. 4–5, *supra*). Under 18 U.S.C. 1951, extortion has no place as a means of obtaining higher wages and other monetary benefits for union members. Here, the allegations of the indictment, which must be accepted for present purposes, specify that the appellees as "part of [a] conspiracy" to force Gulf States to agree to a union contract "calling for higher wages and other monetary benefits" (App. C, p.14a) committed at least five acts of violence involving the shooting and sabotage of Gulf States' transformers and the blowing up of a company transformer substation (App. C, pp. 14a–15a). It is difficult to conceive of activity more plainly fitting within the statutory concept of extortionate conduct.

What is involved here is something far different from the incidental injury to person or property that not infrequently occurs as a consequence of the charged atmosphere attending a prolonged labor dispute—such as, for example, the throwing of a rock by an employee on a picket line through the employer's window. As the Ninth Circuit pointed out recently in *United States* v. *Caldes and Lowery*, 457 F. 2d 74, 77, "often in legitimate labor disputes, tempers grow short, blows are struck on the picket line, and minor

but intentional damage is done to the property of the employer." Cf. *National Labor Relations Board* v. *Burnup & Sims*, 379 U.S. 21. It might well be appropriate to regard such conduct, as the Ninth Circuit did in *Caldes and Lowery* (457 F. 2d at 78), as simply "the by-product of the frustration * * * engendered by a prolonged, bona fide collective bargaining negotiation * * *," and thus to characterize the acts as nothing more than "mischievous misconduct" (457 F. 2d at 78).[10] Spontaneous violent reactions of this sort may well "not partake of the nature of extortion" (*United States* v. *Local 807, supra*, 315 U.S. at 523), since there is probably no formulated intent to coerce the employer to part with his property.

But that question—*i.e.*, whether the threatened or actual violence was committed with an intent that the victim pay over money in response to such a show of force or was merely an isolated response provoked by the abrasive atmosphere on the picket line—is a

[10] *Caldes and Lowery* involved a claim of extortion in connection with collective bargaining negotiations between the Laundry and Drycleaning International Union, Local 369, and Mission Linen Supply Company. On two separate occasions, members of the union were seen throwing a vial of green dye into a laundry hamper owned by the company. The court of appeals reversed a conviction under the Hobbs Act. While it indicated in dictum—in our view erroneously—that the statutory term "property" applied in this context only to wages demanded for unwanted services, the court rested its decision on a separate ground. It concluded that the dye-throwing episodes were no more than mere "* * * by-play while trying to gain larger wages or better * * * hours and conditions * * *" (457 F. 2d at 77), and thus not acts of force or violence aimed at coercing the employer into agreeing to higher wages, within the statutory definition of "extortion" (457 F. 2d at 78).

matter to be resolved by the jury; it could not justify the dismissal of the indictment in the instant case. Here the charge is "conspiracy" to "obtain * * * property * * * in the form of wages and other things of value * * * by * * * actual force * * *" (App. C, p. 14a), to wit: by firing on three separate occasions into a transformer substation owned by Gulf States "using a high powered rifle" (*ibid.*), by "drain[ing] oil from a [company] transformer" (App. C, p. 15a) on another occasion, and on still another occasion by blowing up a company "transformer substation * * * using twelve sticks of dynamite" (*ibid.*). Such conduct, if proved, is on its face not "mischievious misconduct," or merely "the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation * * *" (*United States* v. *Caldes and Lowery, supra*, 457 F. 2d at 78). It is, instead, exactly the type of extortionate conduct Congress intended to reach by the phrase, "wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)).

Violence of this sort for the purpose of "obtaining property" is as much a crime under the Hobbs Act when committed in the context of a labor dispute as when committed in other contexts. Union employees and officials are not excepted from coverage as the Act as now written. The facts pleaded in this indictment reflect the precise evil which the intentionally broad language of the statute intended to proscribe.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court should be reversed and the indictment reinstated.

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JULY 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, *Petitioner*

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON AND MILTON RAY WOODWARD, *Respondents*

MOTION OF AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Comes now the American Newspaper Publishers Association, by its counsel, and moves this honorable Court for leave to file a brief *Amicus Curiae* in support of the petitioner, the United States of America, on the following grounds:

1. The American Newspaper Publishers Association is a non-profit corporation organized and existing under the laws of the State of New York. Its member newspapers comprise more than ninety percent of the daily and Sunday circulation of newspapers within the United States.

2. On May 16, 1972, this Court noted Probable Jurisdiction of this case. Counsel for the American Newspaper Publishers Association has secured the consent of the United States for the ANPA participation as an *Amicus* in this case. However, counsel for the respondents has indicated that consent cannot be granted on behalf of their clients. The government has already filed its brief in the action and the brief for the respondents is due on or before September 20, 1972. The proferred ANPA *Amicus* brief will not interfere with this briefing schedule in that the ANPA does not intend to directly comment upon the brief for the respondents.

3. Instead, the membership of the ANPA is vitally interested with the issue presented in this case as to the applicability of the Hobbs Act to extortionate demands made by union members where the ends of those demands are legitimate. It is common knowledge that newspapers in the past have been plagued with violence directly associated with the collective bargaining process. It is the purpose of the ANPA to bring this to the attention of the Court and urge upon the Court that the application of the Hobbs Act will be an effective remedy to prevent or curtail strike and other labor violence involving the newspaper publishing business. Moreover, the ANPA desires to present and analyze the state laws on this subject and discuss in its brief the ineffectiveness of these state remedies to such sit-

uations. The ANPA is hopeful that its brief will be of assistance to the Court in resolving the issues presented by this appeal.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, *Appellant*,

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD, *Appellees*.

On Appeal From the United States District Court for the Eastern District of Louisiana

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BRIEF OF APPELLEES IN OPPOSITION TO MOTION OF AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION TO FILE BRIEF AS AMICUS CURIAE

Appellees oppose the motion of the American Newspaper Publishers Association to file a brief as *amicus curiae* in support of the position of appellant, the United States.

1. The proffered brief is altogether out of time. Rule 42(2) of this Court's Rules provides that an

amicus brief shall be "presented within the time allowed for the filing of the brief of the party supported." The movant proposes to file a brief in support of appellant, the United States. The brief for the United States was filed on or about July 20, 1972, following an extension of time of approximately three weeks. The motion, therefore, comes about seven weeks after the Government's brief was filed and about ten weeks after such brief was originally due. Probable jurisdiction was noted by the Court on May 15, 1972. Movant, therefore, had more than two months within which to file a timely brief, and no reason justifying so untimely filing is given.

2. Appellee's brief is due to be filed on September 20, 1972, and is now in the last stages of preparation. Except by leave to file a supplemental brief, appellees will have no opportunity to respond to the *amicus* brief. No reason is suggested why appellees should either be denied the opportunity to reply or be put to the burden of a last-minute effort to respond.

3. The movant shows no distinguishing interest in the issues in this case, and it particularizes no matter which it proposes to brief which is relevant to decision of the case. Its representation that "newspapers in the past have been plagued with violence directly associated with the collective bargaining process", if accurate, gives it no special insight into the meaning of the Hobbs Act. It further asserts that application of the Hobbs Act to strike violence standing alone would be an "effective remedy" to control its incidence, and that state law fails to provide an effective remedy. Neither assertion, if supportable, is relevant to ascertaining the right reading of a statute confined to "robbery or extortion." In short, rather

transparently, the movant proposes to write a committee report to support an argument of what in its view the law should be, not a brief to support an interpretation of what an existing law does mean.

For these reasons the motion for leave to file a brief as *amicus curiae* should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, *Appellant*

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD, *Appellees*

On Appeal from the United States District Court for the Eastern District of Louisiana

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, *Appellant*

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD, *Appellees*

On Appeal from the United States District Court for the Eastern District of Louisiana

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BRIEF FOR APPELLEES

QUESTION PRESENTED

Whether the commission of violence during the course of a lawful strike in order to secure an employer's agreement to a union contract calling for higher wages and other monetary benefits constitutes the crime of "extortion" within the meaning of the Hobbs Act punishable by a $10,000 fine and twenty years imprisonment.

STATEMENT

On October 15, 1970, a one-count indictment was returned in the United States District Court for the Eastern District of Louisiana. The indictment alleges that Gulf States Utilities Company is an interstate public utility operating in Louisiana and Texas engaged in supplying electrical energy (JS 12a). International Brotherhood of Electrical Workers, Local Union 2286, represents the employees of the Company (JS 13a). International Brotherhood of Electrical Workers, Local Union 390, represents employees of independent contractors engaged by the Company (JS 12a-13a). Defendant-appellee Travis Paul Enmons is the business manager and a member of Local 390; defendant-appellee Jackie J. Bendo is the assistant business manager and a member of Local 390; defendant-appellee Milton Ray Woodward is a member of Local 390; and defendant-appellee Ed Wayne Barton is business manager and a member of Local 2286 (JS 13a).

The indictment alleges five acts of violence in the period between October 30, 1969 and June 2, 1970 in which one or another of the appellees and named co-conspirators are said to have participated (JS 14a-15a). These allegations are: (1) On October 30, 1969, appellee Bendo and a co-conspirator fired a high powered rifle into a transformer substation of the Company, known as the Alsen Substation, intending to cause the equipment to malfunction (JS 14a-15a). (2) About November 10, 1969, appellee Woodward and a co-conspirator fired high-powered rifles into a transformer substation of the Company, known as the Lindsey Substation, intending to cause the equipment to malfunction (JS 15a). (3) About December 9, 1969, appellee Woodward and two co-conspirators went to a substation of

the Company, known as the Port Hudson Bulk Station, where they drained the oil from the transformers located there, intending to cause the equipment to malfunction (JS 15a). (4) About December 9, 1969, appellee Woodward and two co-conspirators fired a high powered rifle into a transformer substation, known as the Lindsey Substation, for the purpose of causing the transformer to malfunction (JS 15a). (5) About June 2, 1970, two co-conspirators, at the instructions of appellee Bendo, blew up a transformer substation of the Company, known as the Sandy Creek Substation, using twelve sticks of dynamite (JS 15a).

The indictment charges that these acts of violence were perpetrated in fulfillment of a conspiracy of the appellees and others, the conspiracy being "to obstruct, delay, and affect commerce, . . . by extortion, . . . and to commit physical violence to property in furtherance" of it (JS 13a-14a). The conspiracy is particularized as a plan to "obtain the property" of the Company "in the form of wages and other things of value" with the consent of the Company, "such consent to be induced by the wrongful use of actual force, violence, and fear of economic injury . . ." (JS 14a). The violence was committed and the Company's property destroyed, it is alleged, "in order to force said Company to agree to a contract with Local 2286 . . . calling for higher wages and other monetary benefits" (JS 14a).

The indictment charges that these acts constitute extortion in violation of 18 U.S.C. § 1951 (JS 14a, 16a), the Hobbs Act. That Act makes it a crime to obstruct, delay or affect commerce, or to attempt or conspire to do so, "by robbery or extortion . . ." The term "extortion" is defined to mean "the obtaining of property

from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." A violation subjects the offender to a fine of "not more than $10,000" or imprisonment for "not more than twenty years, or both."

On motion, the District Court dismissed the indictment for failure to state an offense within the scope of the Hobbs Act (JS 11a). It is common ground, as the District Court stated in its opinion, that "the defendants were union members who were on strike against their employer, Gulf States Utilities Company"; "[t]here is no suggestion that the strike itself was illegal, nor is there any suggestion that the object of the strike, i.e., to secure higher wages from Gulf State Utilities Company was an illegal objective" (JS 4a-5a). Accordingly, as focused by the District Court, the "only question presented is whether or not the acts with which defendants are charged constituted 'extortion' as contemplated by the Hobbs Act" (JS 5a). It concluded that they "do not" (*ibid.*).

The District Court observed that, "[i]f the wages sought by violent acts are wages to be paid for unneeded or unwanted services, or for no services at all, there is good authority for the conclusion that such would constitute extortion prohibited by the Act" (JS 8a). The indictment, however, alleges no such conduct but is instead based on the premise that the Hobbs Act proscribes as extortion of property recourse to violence to support a simple demand for increased wages standing alone (JS 9a). In the District Court's view "the wages of bona-fide employees" do not "constitute 'property' as contemplated by the Hobbs Act. The union had a right to disrupt the business of the employer by lawfully striking for higher wages. Acts of violence oc-

curring during a lawful strike and resulting in damage to persons or property are undoubtedly punishable under State law. To punish persons for such acts of violence was not the purpose of the Hobbs Act . . . . [T]hese acts simply did not constitute the 'obtaining of property from another' that is contemplated by the Hobbs Act" (JS 9a-10a).

Dependent on their character the acts of violence and property damage charged in the indictment, alleged to have occurred in Louisiana, are criminally punishable by Louisiana law as "aggravated arson," "simple arson," "aggravated criminal damage to property," "simple criminal damage to property," or a "criminal conspiracy" or "an attempt" to commit these offenses. LSA-R.S. 14:51, 52, 55, 56, 26, 27 (West's 1951). Aggravated arson, punishable by imprisonment at hard labor for not less than two nor more than twenty years, is defined as follows (14:51):

> Aggravated arson is the intentional damaging by any explosive substance or the setting fire to any structure, watercraft, or moveable whereby it is foreseeable that human life might be endangered.

Simple arson carries a lesser punishment than aggravated arson. It subjects an offender to a maximum fine of $5,000 and maximum imprisonment at hard labor for ten years if the damage amounts to $500 or more, and to a maximum fine of $500 or maximum imprisonment of one year, or both, where the damage is less than $500. Simple arson is defined as follows (14:52):

> Simple arson is the intentional damaging by any explosive substance or the setting fire to any property of another, without the consent of the owner

> and except as provided in Article 51 (aggravated arson).

Aggravated criminal damage to property, punishable by imprisonment with or without hard labor for not less than one nor more than fifteen years, is defined as follows (14:55):

> Aggravated criminal damage to property is the intentional damaging of any structure, watercraft, or moveable, wherein it is foreseeable that human life might be endangered, by any means other than fire or explosion.

Simple criminal damage to property bears a lesser punishment than aggravated criminal damage. It subjects an offender to a maximum fine of $1,000, and maximum imprisonment of two years, or both, when the damage done amounts to $500 or more; where the damage is less than $500, the offender is punishable by a maximum fine of $500, maximum imprisonment of six months, or both. Simple criminal damage to property is defined as follows (14:56):

> Simple criminal damage to property is the intentional damaging of any property of another, without the consent of the owner, except as provided in Article 55 (aggravated criminal damage to property), by any means other than fire or explosion.

Louisiana also prohibits a "criminal conspiracy" to commit any crime or "an attempt to commit the offense intended", and with respect to arson and criminal damage to property the offender in either case "shall be fined or imprisoned, or both, in the same manner as for the [consummated] offense . . .; but such fine or imprisonment shall not exceed one-half of the

largest fine, or one-half of the longest term of imprisonment prescribed for such [consummated] offense . . ., or both." 14:26, 27.

The criminal process of Louisiana has been invoked against appellees with respect to the incidents charged in the federal indictment. As to the alleged draining of oil from the transformers at the Port Hudson Bulk Station on December 9, 1960 (*supra,* pp. 2-3), appellees Bendo and Woodward have been convicted of simple criminal damage to property, fined $500, and sentenced to imprisonment for one year. The convictions have been appealed. With respect to the alleged firing of a high-powered rifle into the Alsen Substation on October 30, 1969 (*supra,* p. 2), a bill of information charging simple criminal damage to property was issued but the prosecution has been dropped. As to the three other alleged incidents, no affidavit in support of an arrest was filed with respect to the incident at the Lindsey Substation on December 9, 1969 (*supra,* p. 3), an affidavit in support of arrest was filed charging aggravated criminal damage to property at the Lindsey Substation on November 10, 1969 (*supra,* p. 2), and an affidavit in support of arrest was filed charging conspiracy to commit aggravated arson by dynamiting the Sandy Creek Substation on June 2, 1970 (*supra,* p. 3). No bills of information or indictments have issued on these charges, and the bail bonds have been returned.

The federal indictment dismissed in this case had been returned on October 15, 1970 in the Eastern District of Louisiana. Contemporaneous indictments based on an identical concept of the Hobbs Act returned in other parts of the country have been similarly dismissed. An indictment was returned in the District of

Arizona on December 9, 1969, and on appeal from a judgment of conviction the Court of Appeals for the Ninth Circuit ordered the indictment dismissed. *United States* v. *Caldes,* 457 F.2d 74 (1972). Two indictments were returned in the Southern District of Florida in early 1970, and each was dismissed without opinion by the District Court in June 1970. *United States* v. *Rutcofsky,* D.C.S.D. Fla., No. 70-101-CR-JE, June 24, 1970; *United States* v. *Schiffman,* D.C.S.D. Fla., No. 70-102-CR-JE, June 25, 1970.[1]

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[1] A similar indictment was returned in the Eastern District of New York on January 12, 1972, but proceedings on that indictment have been stayed pending decision in this case. *United States* v. *Spero, et al.,* D.C.E.D.N.Y., No. 72 CR 17. The *Spero* indictment alleges a conspiracy to "obtain the property of Cosmopolitan, to wit, its money, in the form of wages for the employment" of four named defendants and one named co-conspirator (¶ 7), and "a union labor collective bargaining contract . . ." (¶ 8). Three of the four named defendants and the named co-conspirator, whose sought-for "employment" the indictment alleges as objectionable, were found by the National Labor Relations Board on January 27, 1972, to be among the twelve employees against whom Cosmopolitan had discriminated in regard to their hire and tenure of employment. *Cosmopolitan Dry Cleaning Machinery Co.,* 195 NLRB No. 31, 79 LRRM 1334 (1972). The NLRB Trial Examiner, whose findings the NLRB adopted, found that "the installation employees refused to go to work without assurances that they would be paid for the Memorial Day holiday, and that . . . [Cosmopolitan's secretary-treasurer] asked each man to go to work and fired him upon his refusal to do so" (TXD sl. op. p. 5). "As their concerted refusal to work for this reason was a protected activity within the meaning of Section 7 of the Act, . . . the Company violated Section 8(a)(1) of the Act by discharging them for this activity" (TXD sl. op. p. 10). The *Spero* indictment is thus evidently based on the theory that to seek the reinstatement of discriminatorily-discharged employees constitutes "the obtaining of propery from another" within the prohibition of the Hobbs Act.

SUMMARY OF ARGUMENT

I

The Hobbs Act embodies the conventional concept of extortion as a compound crime combining the willful exertion of wrongful means employed with the felonious intent to misappropriate property. The indictment in this case charges as extortion the use of violence to obtain a union contract "calling for higher wages and other monetary benefits" (JS 14a). It therefore fails to allege a constituent element of extortion because nothing in it charges the felonious misappropriation of another's property. For there is no way at all that efforts to secure a collective bargaining agreement establishing higher wages and other monetary benefits can possibly be characterized as misappropriation of another's property with felonious intent. An employer who pays wages and other benefits in exchange for work performed for him is not having his property misappropriated. What he gives is the quid pro quo for what he gets. Of course the use of violence to fix the terms for the performance of work is wrongful. It is punishable criminally and remediable civilly. But it is not extortion because it is not the felonious misappropriation of property.

The legislative history of the Hobbs Act clearly shows that its proponents meant to reach extortion in the conventional sense and that they knowingly embraced the felonious misappropriation of property as an indispensable constituent of extortion. Two other elements of the history further confirm this reading of the Hobbs Act. First, Congress intended to bring within the scope of extortionate conduct the activity which this Court in *United States* v. *Local 807*, 315 U.S. 521 (1942), held

had been excepted from the reach of the Federal Anti-Racketeering Act of 1934 as "the payment of wages by a bona-fide employer to a bona-fide employee." Second, to accomplish this end, Congress adopted the definition of robbery and extortion embraced by the New York statute.

Read with maximum expansiveness, the disfavored conduct revealed in the *Local 807* case which Congress desired to prohibit as extortion is confined to the use of wrongful means to compel payment of wages for "imposed, unwanted, superfluous and fictitious services ...." *United States* v. *Green*, 350 U.*S.* 415, 417 (1956). This conduct is of course well within the ready and conventional meaning of extortion; it is the felonious misappropriation of another's property to coerce him to give up his money for which he receives nothing in exchange but "imposed, unwanted superfluous and fictitious services." The indictment in this case, however, charges no such conduct. It is levelled instead at obtaining a union contract "calling for higher wages and other monetary benefits" for the performance of services desired by and valuable to the employer. Exaction of payment for "imposed, unwanted, superfluous and fictitious services" is at the opposite end from seeking increased compensation for desired and valuable work. The Hobbs Act does not bridge, but designedly maintains the distance between, these two extremes.

To reach the disfavored conduct revealed in the *Local 807* case, but to repel the accusation that their aim was "antilabor" in tenor, the proponents of the Hobbs Act repeatedly asserted that they had done no more than to incorporate into that Act the conventional definitions of robbery and extortion expressed in the New

York statute. It is therefore appropriate to look to New York law. That law refutes any notion that labor action can be extortionate when it is directed at obtaining a union contract "calling for higher wages and other monetary benefits." In New York, felonious intent to misappropriate property divides the licit from the illicit in determining whether labor action is extortionate. When the object of the activity is the personal enrichment of the actor, rather than the economic benefit of the worker, it is extortion; on the other hand, when the end which the activity serves is attainment of a legitimate labor objective, there is no extortion because there is no intent to misappropriate property. Under New York law, therefore, given the objective of securing an improved union contract, there can be no extortion because there can be no felonious misappropriation of property. We know of no case in New York, or in any other jurisdiction, where the exertion of wrongful means to secure better employment terms has been suggested, much less held, to be extortionate.

Congress reaffirmed its purpose to exclude obtaining improved employment terms from the scope of an extortion statute when in 1959 it enacted section 602 of the Labor-Management Reporting and Disclosure Act to reach "extortionate picketing." In section 602, Congress barred picketing for "the personal profit or enrichment of any individual" but explicitly excepted picketing conducted to secure "a bona fide increase in wages or other employee benefits." Section 602 supplements the Hobbs Act. Its precise role is to make sure that, if not already reached and punishable by the Hobbs Act, nonviolent picketing would be reached and identically punishable by section 602 when its purpose is "the personal profit or enrichment of any individual"

—the "shakedown," the "buy off," the "payoff." But expressly in section 602, and inherently in the Hobbs Act which it supplements, Congress excludes from the concept of extortion securing "a bona fide increase in wages or other employment benefits."

The central fallacy in the Government's position is epitomized in its statement that "higher wages obtained for wanted services through threats or acts of violence stand on no different footing under the Hobbs Act than wages for unwanted services similarly obtained" (Br. p. 10). The Government thus cuts off extortion from its roots in the felonious misappropriation of property and treats the offense as if it were founded in violence simpliciter. But violence as such is not extortion and is not punishable as extortion.

II

When the Government would convert an extortion statute into a medium by which to reach violence simpliciter in labor disputes, it wrenches industrial violence from its societal context, disregards the traditional means by which that wrong has been regulated, works a gross distortion of state-federal relations in this area, and disserves other important interests.

First, the legal control of strike violence, by both criminal and civil means, is essentially and primarily within the province of the States. A reading of the Hobbs Act to reach strike violence as such would mark a major federal encroachment upon a traditional state domain. Given the primary responsibility of the States to define and prosecute crimes, and the dislocation of federal-state relations resulting from reading a federal criminal statute to intrude upon state criminal juris-

diction, this Court abjures an expansive interpretation in the absence of a clear direction from Congress. No such direction appears in the Hobbs Act justifying conversion of an extortion statute into a means by which to reach industrial violence simpliciter.

Second, the Government's expansive reading of the Hobbs Act would bear with especial severity on the individual who is accused of strike violence. All strike violence would be swept within the scope of the Hobbs Act, from the fist fight to murder, from a deflated tire to arson, and all would be subject to the same Draconian punishment of twenty years imprisonment and a $10,000 fine. In contrast, state law is much more circumspect, making careful distinctions in the gravity of the particular wrong and the harm it causes, and moderating the punishment to fit the crime. It is highly unlikely that, had Congress indeed faced the question of strike violence and decided to control it as a federal crime, it would not have graded both the particular offense and the corresponding punishment as state law ordinarily does.

But the severity on the individual does not stop with the impact of the Hobbs Act standing alone. For, as successive state and federal prosecutions for the same offense are not barred, a person accused of strike violence faces both state and federal prosecution and punishment. For example, in the case of strike violence constituting aggravated arson occurring in Louisiana, an accused could be prosecuted, convicted, and sentenced to twenty years imprisonment by Louisiana, and could be prosecuted, convicted, and sentenced to another twenty years imprisonment by the United States. Thus, under the Government's view, Congress exposed the individual to double prosecution and to vastly in-

creased punishment for the offense by adding federal to state sanctions. It is to the last degree unlikely that in enacting the Hobbs Act Congress confronted or intended any such result.

Third, the extension of the Hobbs Act to reach strike violence as such would overextend limited federal resources. There are simply not enough federal law officers to begin to police strike violence erupting everywhere and anywhere in the United States. The implication of this factor is not limited to the unlikelihood that Congress would dilute federal police resources by expending it on matters that local authority can handle at least as well. The implication is far more fundamental and fateful as it relates to the preservation of the evenhanded administration of justice. For if federal police resources are not adequate to the task, the inevitable consequence will be that federal law will be applied haphazardly or invidiously. It will vary from situation to situation and from community to community dependent on the accident of the preoccupation, zeal, interest, or worse of a particular United States Attorney. That environment breeds "arbitrary and erratic arrests and convictions" (*Papachristou* v. *City of Jacksonville,* 405 U.S. 156, 162 (1972)), a regime which this Court does not encourage or facilitate. Nor should the added burden on an already overtaxed federal court system be overlooked.

Fourth, to moderate the sweep of its reading of the Hobbs Act, the Government would except from the strike violence it would reach "incidental injury to person or property that not infrequently occurs as a consequence of the charged atmosphere attending a

prolonged labor dispute . . ." (Br. p. 19). But this retreat compounds the vice of its position. For the Government has now created an unknowable crime, one that is void for vagueness. No one can say what strike violence is "incidental" and what is not, when the intention to commit it should be excused because energized by emotion, how "prolonged" a labor dispute must be before its duration justifies disregard of violence because it is the product of frustration, and at what level the degree of violence overbalances the provocation which causes it. The Government cannot salvage its overbroad reading of the Hobbs Act by inventing a limited construction which is itself so imprecise that it creates a standardless crime.

Fifth, we return to our starting point. The Hobbs Act crime of extortion is a "larceny-type" offense.[2] It is not stealing to seek a union contract "calling for higher wages and other monetary benefits." This is not the target at which Congress aimed. As is required in the interpretation of a criminal statute, giving the Hobbs Act a strict but sensible construction, in keeping with the rule in favor of lenity, it cannot be read to reach strike violence when that violence is not conjoined with the felonious misappropriation of property, and to seek an improved union contract is not to misappropriate another's property with felonious intent.

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[2] *United States* v. *Sweeney,* 262 F.2d 272, 275 (C.A. 3, 1959).

ARGUMENT

The Commission of Violence During the Course of a Lawful Strike in Order To Secure an Employer's Agreement to a Union Contract Calling for Higher Wages and Other Monetary Benefits Does Not Constitute the Crime of Extortion Within the Meaning of the Hobbs Act.

We divide our brief into two parts. In Part I we show that the felonious misappropriation of another's property is an essential element of the Hobbs Act crime of extortion, and that to obtain a union contract "calling for higher wages and other monetary benefits" is simply not the felonious misappropriation of another's property. In Part II we show that, were extortion divorced from felonious misappropriation of property and used as a means to reach violence simpliciter in labor disputes, the result would be to disregard the societal setting of industrial violence, to dislocate the existing and traditional means by which it is controlled, to distort federal-state relations in this area, and to disserve other important interests.

I. THE FELONIOUS MISAPPROPRIATION OF ANOTHER'S PROPERTY IS AN ESSENTIAL ELEMENT OF THE HOBBS ACT CRIME OF EXTORTION AND OBTAINING AN IMPROVED UNION CONTRACT FAILS TO SUPPLY THAT ELEMENT.

A. The Hobbs Act Embodies the Conventional Concept of Extortion as a Compound Crime Combining the Willful Exertion of Wrongful Means Employed With the Felonious Intent to Misappropriate Property.

". . . [T]here are two essential elements of a Hobbs Act crime: interference with commerce, and extortion." *Stirone* v. *United States,* 361 U.S. 212, 218 (1960). In this case adverse effect on interstate commerce is not in

question. But extortion is. It is therefore essential to identify the constituents of extortion in order to ascertain whether the indictment in this case sufficiently charges that crime.

Extortion is a compound crime. It is, in essence, composed of willful actual or threatened injury to person or property *plus* the use of that means with the felonious intent to misappropriate the property of another. Both elements must coexist to constitute extortion. Thus, willful violence to the person is, standing alone, an assault. Intentional misappropriation of the property of another is, standing alone, larceny. The conjunction of the two is extortion.

"... [T]o protect not only against misappropriation but also against injuries which may result from peculiarly dangerous means devised for accomplishing misappropriation, there developed the law of aggravated theft"—robbery and extortion.[3] "The law of aggravated theft is designed to deter conduct which tends to result in misappropriation of property *and* physical or mental injury ..."[4] "Extortion is a compound felony and therefore requires proof of felonious intent which will not be implied merely because the means are wrongful."[5]

Willful misappropriation of property, not recourse to wrongful means alone, is thus an essential constituent of the crime of extortion. "To constitute extortion at

[3] Note, *A Rationale Of The Law Of Aggravated Theft*, 54 Colum. L. Rev. 84 (1954).

[4] *Id.* at 101 (emphasis in original).

[5] Note, *Labor Faces The Amended Anti-Racketeering Act*, 101 Penn. L. Rev. 1030, 1052 (1953).

common law, and very generally under the statutes, there must be a corrupt intent."[6]

The Hobbs Act embodies the conventional concept of extortion as a compound crime combining the willful exertion of wrongful means employed with the felonious intent to misappropriate property. The Hobbs Act was Congress' response to this Court's decision in *United States* v. *Local 807*, 315 U.S. 521 (1942) (*infra*, p. 27). In *Local 807*, the Court held that it was not a violation of the Federal Anti-Racketeering Act of 1934 to exact money, by use or threat of violence, from an employer for whom no services are performed for the money, when a good faith tender of work is made to the employer which the offeror is willing to perform but which the employer rejects. This Court decided *Local 807* on March 2, 1942. Hearings on three bills addressed in part to the *Local 807* decision were held by a subcommittee of the House Judiciary Committee on April 2, 17, 20, 22, 24, 28, and May 1, 1942.[7] At the conclusion of the hearings, Representative Sam Hobbs, the moving force behind the enactment of the Hobbs Act, defended his bill, H.R. 6872, but stated that he proposed to substitute a new bill for it.[8] His explanation expresses the abiding theme which runs throughout the history of the enactment of the Hobbs Act:[9]

> . . . I wish to call your attention to the fact that the elements of the crime denounced by this bill are

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[6] Clark & Marshall, A Treatise On The Law of Crimes, § 12.17, p. 898 (7th ed. 1967).

[7] Hearings before Subcommittee No. 3 of the Committee on the Judiciary on H.R. 5218, H.R. 6752, and H.R. 6872, 77th Cong., 2d Sess. (1942), hereafter cited as Hearings.

[8] He did introduce a new bill, H.R. 7067, 77th Cong., 2d Sess. (1942), reported in H. Rep. No. 2176, 77th Cong., 2d Sess. (1942).

[9] Hearings, 426-428.

> essentially the same as the elements of robbery or extortion. The only added element is interference with interstate commerce. In order to amplify and clarify, I am seriously considering a revision of H.R. 6872 so that it will denounce interference with interstate commerce by robbery or extortion in haec verba. Of course, the revised bill should include conspiracy and attempts to commit such a crime, but the essence would be interference with interstate commerce by robbery or extortion.
>
> * * *
>
> This bill is grounded upon the bedrock principle that crime is crime, no matter who commits it, and that robbery is robbery and extortion, extortion, whether the perpetrator has a union card in his pocket or not.

Representative Hobbs reiterated this refrain in debate on the House floor in 1943 and 1945, stressing that the reach of the bill was limited to robbery and extortion in the conventional sense.[10] "That is all we are shooting at. Those words have been construed a thousand times by the courts. Everybody knows what they mean."[11]

And everybody knew, as the 1943 and 1945 House floor debates made clear, that extortion required, not simply the use of wrongful means, but the felonious intent to misappropriate property. Thus, Representative Gwynne explained "what a prosecutor would need to allege and prove to get conviction under this law if this bill becomes law" (91 Cong. Rec. 11903 (1945)):

> First, they would need to prove that the activity complained of in some way affected interstate

[10] 89 Cong. Rec. 3217 (1943); 91 Cong. Rec. 11900, 11912 (1945).

[11] 91 Cong. 11912 (1945). See also, *infra*, pp. 28-30.

> commerce; second, they would have to prove that there was an actual, not a theoretical, taking of personal property; third, they would have to prove that the taking was by violence, by personal violence, or by actual threats of personal violence; and then, fourth, they would have to prove that the acts done—they might be violent, they might take something, but the Government would have to prove in addition that the acts done did not come within the exceptions set out in title III [now part (c)].

The second and third elements are presently relevant. The second element—the "taking"—is the intentional misappropriation of property; the third element—the "violence"—is the intentional exertion of wrongful means to effectuate the misappropriation. Both must coexist.

If there were any doubt that wrongful means and felonious misappropriation must conjoin, an ensuing colloquy put the question to rest. It shows that wrongful means do not alone suffice to establish extortion; those means must be employed to effectuate a "taking" which is proscribed because it constitutes a feloniously intentional misappropriation of property. Representatives Voorhis, Walter, and Hobbs, referring to Representative Gwynne's explanation, stated that (91 Cong. Rec. 11908 (1945)):

> MR. WALTER. Our distinguished colleague from Iowa [Mr. Gwynne] pointed out the elements that it would be necessary to prove in order to make out a crime and I call the gentleman's attention to the fact that *a mere threat does not constitute a crime.* There must accompany that threat an *unlawful* taking. [Emphasis supplied.]
>
> MR. VOORHIS of California. I thank the gentleman. And certainly demands for higher wages or

attempts to collect union dues are not unlawful acts by any stretch of the imagination.

Responding to Representative Voorhis' statement, Representative Hobbs agreed with him, saying that (*ibid.*):

> May I add that the gentleman, in my opinion, is exactly correct and takes the proper position in his questions.

The upshot of this colloquy is clear. A "threat" alone is not enough—that constitutes wrongful means only. It must be accompanied by an *"unlawful"* taking"—that means the misappropriation of property with felonious intent. And misappropriation of property—a distinct and separate element of the offense—does not embrace "demands for higher wages or attempts to collect union dues." As Representative Walter had earlier stated, "the taking must be an *unlawful* taking", to which Representative Hobbs replied, "Certainly, sir." 91 Cong. Rec. 11901 (1945) (emphasis supplied). And, replying to a suggestion that "extortion . . . would apply to an initiation fee in a labor union", Representative Hobbs responded with an emphatic "Certainly not." 89 Cong. Rec. 3228 (1943).

The reiterated theme that wrongful means, unconnected with a felonious intent to misappropriate property, does not constitute extortion, is further importantly exemplified by Representative Hobbs' forceful rejection of the idea that strike misconduct as such is extortionate (89 Cong. Rec. 3213 (1943)):

> MR. MARCANTONIO. All right. In connection with a strike, if an incident occurs which involves—
>
> MR. HOBBS. The gentleman need go no further.

This bill does not cover strikes or any question relating to strikes.

* * *

MR. MARCANTONIO. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct?

MR. HOBBS. Certainly.

MR. MARCANTONIO. That then could become extortion under the gentlemen's bill, and that striker as well as his union officials could be charged with violation of sections in this bill.

MR. HOBBS. I disagree with that and deny it in toto.

Representative Hobbs could "disagree . . . and deny . . . in toto" that strike misconduct standing alone is extortionate because of the total absence in this situation of the indispensable additional element of intentional misappropriation of property essential to extortion.

In the Hobbs Act, in defining extortion, the element of misappropriation of property is embraced in the words "obtaining property from another," and the element of proscribed means is embraced in the words "induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." While the word "wrongful" in this definition literally precedes the recital of the prohibited means, the concept of "wrongful" also attaches to the "obtaining of property from another." Representative Voorhis put the following question to Representative Hobbs: "In subsection (c), page 2, there is the word 'wrongful.' Does that word 'wrongful' apply to the entire section?" Representative Hobbs replied, "Yes; it quali-

fies the whole section." 91 Cong. Rec. 11908 (1945). And Representative Hobbs could say accurately, if not perhaps grammatically, that the word "wrongful" "qualifies the whole section" because the core concept of extortion embraces as an indispensable element the feloniously intentional misappropriation of property.

In sum, extortion is the compound crime of exerting wrongful means to misappropriate the property of another. Specific intent is essential to each of these two distinct elements of the offense. There must be a specific intent to resort to wrongful means; there must be a specific intent to misappropriate another's property. The gravamen of the crime "is the felonious intent—animus furandi—the intention to steal"; " 'there must be not only a wrongful act, but a criminal intention.' "[12] Essential to a Hobbs Act crime, as to all kindred felonies, is a " 'vicious will' ", a "concurrence of an evil-meaning mind with an evil-doing hand . . . ." *Morissette* v. *United States,* 342 U.S. 246, 251 (1952).

B. Obtaining a Union Contract Fixing Higher Wages and Improved Monetary Benefits Is Not the Felonious Misappropriation of Another's Property.

We have shown that felonious intent to misappropriate the property of another is an essential element of extortion. That requirement is fatal to the indictment in this case. For the indictment alleges only that, as part of a conspiracy to "obtain the property of the Gulf States Utilities Company in the form of wages and other things of value", the defendants used violent means "to force said Company to agree to a

[12] *United States* v. *Nedley,* 255 F.2d 350, 356, 358 (C.A. 3, 1958); see also, *United States* v. *Green,* 246 F.2d 155, 159 (C.A. 7, 1957), cert. denied, 355 U.S. 871 (1957); *United States* v. *Sweeney,* 262 F.2d 272, 275 (C.A. 3, 1959).

contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits" (JS 14a). Thus, the property of another which is the alleged object of misappropriation is securing a union contract from an employer calling for higher wages and other monetary benefits. That allegation wholly fails to charge a crime within the scope of the Hobbs Act. There is no way at all that efforts to secure a collective bargaining agreement establishing higher wages and other monetary benefits can possibly be characterized as misappropriation of another's property with felonious intent.

An employer who pays wages and other benefits in exchange for work performed for him is not having his property misappropriated. What he gives is the quid pro quo for what he gets. An employer and a worker may of course disagree as to how much should be paid for the work. But a worker who insists that he should get more than the employer wants to give is no more seeking to misappropriate the employer's property than is the employer seeking to misappropriate the worker's labor when he insists upon paying less than the worker wants. They are simply at loggerheads about the price to be paid for what each has to offer to the other. Violence by neither is a permissible means to break the deadlock, and there are ample means to punish violence when either resorts to it (*infra*, pp. 56-59). But violence is not extortionate unless it is directed to the willful misappropriation of another's property. And fixing the terms for the performance of work is simply not misappropriation of property. As expressed in the blunt to-the-point observation in which the proponents of the Hobbs Act concurred, "certainly demands for higher wages . . .

are not unlawful acts by any stretch of the imagination" (*supra*, pp. 20-21).

It is necessary to be mindful of the inchoate character of a collective bargaining agreement, and the remove from the actual enjoyment of the benefits it confers which is inherent in it. "Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a contract of employment except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone." *J. I. Case Co.* v. *N.L.R.B.*, 321 U.S. 332, 334-335 (1944).

It is necessary also to be mindful of a significant change that the Hobbs Act made over the Federal Anti-Racketeering Act of 1934 which it superseded. The Anti-Racketeering Act prohibited recourse to wrongful means to obtain "the payment of money or other valuable considerations" (§ 2(a)) or "the property of another" (§(b)).[13] The Hobbs Act eliminated "the payment of money or other valuable considerations" and retained only "the obtaining of property from another" as proscribed objects.[14]

The inchoate character of a collective bargaining agreement, and the more reified concept of "property" which alone was kept within the scope of the Hobbs Act, add to the certainty that to seek an improvement in the terms of a collective bargaining agreement cannot qualify as the felonious misappropriation of property. And obtaining improved terms

[13] *United States* v. *Local 807*, 315 U.S. 521, 525 (1942).

[14] H. Rep. No. 2176, 77th Cong., 2d Sess., 11 (1942).

is all that the indictment in this case charges as the alleged extortionate object of the defendants' conduct. The long and short of it, accordingly, is that it is simply not a willful misappropriation of another's property, and therefore not extortion, "to force" an employer "to agree to a contract . . . calling for higher wages and other monetary benefits" (JS 14a).[15]

C. The Aim of Congress To Reach the Conduct Disfavored in the Local 807 Case, and the Tailoring of the Hobbs Act to New York Law To Accomplish That End, Further Show That Securing an Improved Union Contract Is Not Within the Ban of the Hobbs Act Against Obtaining Another's Property.

We have shown (1) that a felonious intent to misappropriate the property of another is an essential element of the crime of extortion prohibited by the Hobbs Act, and (2) that efforts to secure a union con-

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[15] The Government has abandoned in this Court the claim it made in the court below that the "obtaining of property from another" by extortion comprehends "the company's 'right to negotiate' the wage questions without unlawful interference" (JS 3a). The claim is advisedly abandoned. The so-called " 'right to negotiate' . . . without unlawful interference" is conceptually "liberty," not "property." *Board of Regents* v. *Roth*, 40 U.S.L.W. 5079, 5081 (S. Ct. June 29, 1972). Furthermore, whether classified as liberty or property, state and federal law protect against interference with it by actual or threatened physical force (*infra*, pp. 56-59), and protection against other interference is governed exclusively by the National Labor Relations Act administered solely by the National Labor Relations Board. *E.g., N.L.R.B.* v. *Insurance Agents' International Union*, 361 U.S. 477 (1960). Congress did not fashion the Hobbs Act as an instrument by which United States Attorneys would become roving overseers of industrial relations.

tract calling for higher wages and other increased monetary benefits simply do not constitute felonious attempts to misappropriate property. This conclusion is further confirmed by a particularized consideration of two interrelated themes which run through the legislative history of the Hobbs Act. First, Congress intended to bring within the scope of extortionate conduct the activity which this Court in *United States* v. *Local 807*, 315 U.S. 521 (1942), held had been excepted from the reach of the Federal Anti-Racketeering Act of 1934 as "the payment of wages by a bona-fide employer to a bona-fide employee." Second, to accomplish this end, Congress adopted the definition of robbery and extortion embraced by the New York statute. We now show that neither the activity revealed in the *Local 807* case which Congress disfavored nor New York law remotely reaches a union contract for higher wages and other increased compensation.

1. The activity in the Local 807 decision which Congress disfavored does not embrace efforts to secure a collective bargaining agreement establishing higher remuneration for the performance of work.

The specific impetus behind enactment of the Hobbs Act was Congress' displeasure with the activity revealed in the *Local 807* decision which this court held was excepted from the reach of the Federal Anti-Racketeering Act of 1934.[16] This Court ruled in *Local*

[16] *United States* v. *Green*, 350 U.S. 415 (1956); H. Rep. No. 2176, 77th Cong., 2d Sess. (1942); H. Rep. No. 66, 78th Cong., 1st Sess. (1943); H. Rep. No. 238, 79th Cong., 1st Sess. (1945); 89 Cong. Rec. 3201, 3206, 3210-11, 3217, 3220 (1943); 91 Cong. Rec. 11842, 11844, 11847-48, 111900, 11903, 11907, 11910, 11911, 11912-13, 11920 (1945).

807 that the Anti-Racketeering Act did not forbid the exaction of money in the form of a wage demand, by use or threat of violence, from an employer for payment to a putative employee who performed no services for the money, when the putative employee made a good faith tender of work which he was willing to perform but which the employer rejected. This conduct was found to be within the statutory exception for "payment of wages by a bona-fide employer to a bona-fide employee." The point which divided the Court was expressed as follows by Chief Justice Stone in dissent (315 U.S. at 541):

> Even though the procuring of jobs by violence is not within the Act, and though this includes the "stand-by" job where no actual service is rendered, the granted immunity, unless its words be disregarded, does not extend to the case where the immediate objective is to force the payment of money regardless of the victim's willingness to accept and treat the extortioner as an employee. It was for the jury to say whether such was the objective of respondents and whether they were aware that the money was paid because of their violence and not as wages.

Accordingly, in relationship to the specific holding in *Local 807,* the short and simple objective of Congress in the Hobbs Act was to prohibit the violent coercion of payment for a stand-by job, which the employer rejected, and where no actual services were to be rendered. The rhetoric employed by various Congressmen to express this objective was understandably imprecise, but the unifying theme of their concern was the exertion of actual or threatened violence to compel an employer to pay for nothing or very nearly nothing.

Representative Hobbs stated that "what we are talking about here is where the employment is by duress or coercion. And that is all the bill provides for."[17] Representative Hancock stated that "[t]his bill is designed simply to prevent both union members and nonunion people from making use of robbery and extortion *under the guise of obtaining wages* in obstruction of interstate commerce"; it reaches "attempting by the use of force or the threat of violence to obtain wages for a job *whether they rendered any service or not*"; and he read approvingly from an editorial condemning "compelling the truckers to pay day's wages to local union drivers *whose services were neither wanted nor needed.*" 91 Cong. Rec. 11900 (1945) (emphasis supplied). Representative Anderson identified the mischief as paying "the man who . . . *does no work* as far as driving or unloading the truck is concerned." 91 Cong. Rec. 11904 (1945) (emphasis supplied). Representative Fellows inveighed against "these stick-up men [who] disappeared as soon as the money was paid *without rendering or offering to render any service.*" 91 Cong. Rec. 11907 (1945) (emphasis supplied). Representative Hobbs asked, "How can we hope to encourage honest men to work a full day for $9.42 if others get that as the fruit of a 10-minute robbery within the law?"[18]

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[17] Hearings, 224-225. Representative Fellows contrasted "an honest relationship of employer and employee, voluntarily entered into . . ." 91 Cong. Rec. 11907 (1945). Representative Jennings spoke of coerced payments "to men whom the owner of the truck and the produce had not only never employed but had never seen before." 91 Cong. Rec. 11911 (1945).

[18] 89 Cong. Rec. 3217 (1943).

It was thus the coerced payment for a rejected stand-by job, where no employment relationship existed and no services were rendered, which was the essential target of the Hobbs Act. It was to this mischief that Representative Hobbs directed his remarks when he stated that "I want to make it perfectly clear that the sole and simple purpose, the single purpose, of this bill is to do the best we can to protect interstate commerce and free the highways and streets of this country of robbers." 91 Cong. Rec. 11912 (1945).

The essential restriction of the reach of the Hobbs Act to the coercion of payment for rejected stand-by jobs is further confirmed by the contemporaneous refusal of Congress to enact legislation prohibiting the employment of more workers than needed. The 1942 hearings, in addition to considering the bill which ultimately became the Hobbs Act, also had under deliberation another bill, H.R. 6752, which proscribed as "not . . . within the legitimate objects" of a labor organization action "to induce or require any employer to employ, or to pay any wages, salary, or other compensation to any person when such person is in fact in excess of the number of persons reasonably required to perform the work in which the employer is engaged . . . ."[19] This provision drew the following criticism from Joseph A. Padway, the General Counsel of the American Federation of Labor:[20]

> A more broadly drawn or more impossible to administer provision is hardly imaginable. How a judge, jury, or prosecutor is to determine when in fact any person is in excess of the number of persons reasonably required, the proposed legis-

[19] Hearings, 4.

[20] *Id.* at 121.

> lation does not say. For instance, who is to say whether the driver of a truck shall be obliged to do his own unloading after he has continuously driven for 10 hours, or for 8 hours, or for 6 hours, or for 4 hours, and how may be determined the number of hours and the conditions of driving to permit the driver to enlist the services of a helper? At best, the administration of this provision would be a matter of guess, conjecture, or opinion. Such a provision would constitute a pervasive threat to all labor activities, and assuredly, such a provision does not meet the requirements of definiteness and certainty necessary to impose criminal penalties for violations thereof.

A spokesman for the Congress of Industrial Organizations similarly criticized the provision as placing within the judicial domain decision as to "the number of workers needed to avoid excessive speed-up", among the "very points in issue between employer and employee" which should be composed in collective bargaining.[21] Later in the hearings, when a proponent of the provision urged its adoption, Representative Hobbs expressed to the witness in the form of questions the identical criticism of the measure that Joseph Padway had previously levelled at it.[22] Representative Hobbs asked, for example, "when you say . . . no labor in excess of that reasonably necessary, is not that putting a pretty hard burden of construction and interpretation upon the agency which has to make that determination?"[23] Thereafter, in the ensuing 1943 and 1945 floor debates, there was not a word to suggest that the Hobbs Act was designed to control the employment

[21] *Id.* at 237.

[22] *Id.* at 346-347.

[23] *Id.* at 346.

of workers in excess of a reasonable number. This limitation on the Act's reach necessarily confines its operation to the performance of no work or sham work.

The cabined scope of the Hobbs Act was again verified when Congress explicitly addressed the question of "featherbedding" in enacting section 8(b)(6) of the National Labor Relations Act. The Hobbs Act became law on July 3, 1946. Within the year, on June 23, 1947, Congress passed section 8(b)(6) as part of its comprehensive amendment of the National Labor Relations Act. Section 8(b)(6) makes it an unfair labor practice for a labor organization or its agents "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed . . . ." Congress thereby prohibited only "stand-by" practices (payment for no work at all); it remitted the regulation of "make work" practices (payment for work said to be useless) to the regime of collective bargaining. "Section 8(b)(6) leaves to collective bargaining the determination of what, if any, work, including bona fide 'made work', shall be included as compensable services and what rate of compensation shall be paid for it." *A.N.P.A.* v. *N.L.R.B.*, 345 U.S. 100, 110-111 (1953). "We are not dealing here with offers of mere 'token' or nominal services . . . . There is no reason to think that sham can be substituted for substance under § 8(b)(6) any more than under any other statute. Payments for 'standing-by,' or for the substantial equivalent of 'standing-by,' are not payment for services performed, but when an employer receives a bona fide offer of competent performance of relevant services, it remains for the employer, through free and fair negotiation, to determine whether such offer shall

be accepted and what compensation shall be paid for the work done." *N.L.R.B.* v. *Gamble Enterprises,* 345 U.S. 117, 123 (1953).

Accordingly, in enacting section 8(b)(6), Congress restricted its reach to exacted payment for no work or a sham substitution for no work. It is to the last degree unlikely that within less than a year before, Congress had already in an earlier criminal statute prohibited a broader range of activity than it was willing to embrace in later remedial civil legislation, particularly when a major reason for its restraint in section 8(b)(6) was that it " 'felt that it was impracticable to give a board or a court the power to say that so many men are all right, and so many men are too many,' "[24] the same area of concern that had been identified and deferred to in the 1942 hearings on the Hobbs Act (*supra,* pp. 30-32).

And so, beyond the specific area of no work or sham work, Congress left so-called "featherbedding" to the control of "private negotiation . . . ."[25] And reliance on the institution of collective bargaining to achieve a solution is itself a prime tenet of national labor policy. The genius of the institution is that it commits the composition of competing values to private decision and not to governmental determination either by the judiciary or other officialdom. National labor policy puts its faith in "the practice and procedure of free and private collective bargaining" (S. Rep. No. 105, 80th Cong., 1st Sess., 8 (1947), in 1 Leg. Hist. LMRA 414); "Government decisions should not be substituted for free agreement" (*id.* at 2, in *id.* at 408); the making

[24] *A.N.P.A.* v. *N.L.R.B.,* 345 U.S. 100, 108 (1945); see also, *Scofield* v. *N.L.R.B.,* 394 U.S. 423, 434 (1969).

[25] *Scofield* v. *N.L.R.B.,* 394 U.S. 423, 434 (1969).

of agreements is not to be trammelled by "governmental supervision of their terms" (S. Rep. No. 573, 74th Cong., 1st Sess., 12 (1935)). ". . . Congress intended that parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." *N.L.R.B.* v. *Insurance Agents' International Union*, 361 U.S. 477, 488 (1960). A negotiator is free to push his view whether or not it is "rightly or wrongly" held. *Local 24, Teamsters* v. *Oliver*, 358 U.S. 283, 294 (1959). And recourse to concerted activity to back a position is not dependent on the "wisdom or unwisdom of the men, their justification or lack of it" (*N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333, 344 (1938)); "the reasonableness of workers' decisions" is not the criterion (*N.L.R.B.* v. *Washington Aluminum Co.*, 370 U.S. 9, 16 (1962)). Private autonomy is thus the essence of the system.[26]

Accordingly, faithful to its reliance on private collective bargaining, Congress in the Hobbs Act, as in its virtually contemporaneous enactment of section 8(b)(6), refused to subject to governmental determination the actual utility of work, even where wrongful means were exerted to compose the disagreement, other than to bar exaction of payment for no work or sham work.

This Court in interpreting the Hobbs Act has carefully observed the line that Congress has drawn. In *United States* v. *Green*, 350 U.S. 415 (1956), the Court considered the meaning of the Hobbs Act in relationship to the disfavored activity disclosed in the *Local 807* case. The indictment in *Green* alleged the "wrong-

[26] See also, *H. K. Porter Co.* v. *N.L.R.B.*, 397 U.S. 99 (1970); *N.L.R.B.* v. *Burns International Security Services*, 40 U.S.L.W. 4499, 4502-03 (S. Ct., May 15, 1972).

ful use . . . of actual and threatened force, violence and fear" to obtain from an employer "his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers . . ." (350 U.S. at 417). The Court decided, and all that it decided, is that "on the allegations of the indictment . . . the acts charged . . . fall within the terms of the [Hobbs] Act" (*id.* at 421). And indeed they do. For the alleged exaction of money for "imposed, unwanted, superfluous and fictitious services" falls within the class of no work or sham work ("superfluous and fictitious") whose tender the employer has rejected ("imposed" and "unwanted") but for which payment is nonetheless demanded by wrongful means ("actual and threatened force, violence and fear"). To resort to such wrongful means to exact payment for "imposed, unwanted, superfluous and fictitious services" is extortion within the ready and conventional meaning of the term. It is the felonious misappropriation of another's property because he is coerced to give up his money for which he receives nothing in exchange but "imposed, unwanted, superfluous and fictitious services."

But, as it relates to this case, what is striking about the decision in *Green,* and the indictment it upholds, is that it not only fails to support, but positively invalidates, the indictment in this case. The maximum reach of the Hobbs Act, no matter how generously it is interpreted, cannot go beyond exaction of payment for "imposed, unwanted, superfluous and ficitious services." Yet the indictment in this case alleges nothing of this nature. On the contrary, all that it alleges is wrongful means "to force" an employer "to agree to a contract . . . calling for higher wages and other monetary benefits" (JS 14a). A controversy over

"higher wages and other benefits" is within the inner core of collective bargaining.

According to the Government, however, it makes no difference that we deal here with "a *bona fide* labor dispute" and that the union's efforts are "directed simply at securing higher wages for existing employees holding down necessary jobs"; it rejects a distinction "between services that are wanted and those that are unwanted . . ." (Br. p. 6). The Government thus repudiates the entire basis on which the enactment of the Hobbs Act rests. The proponents of the Hobbs Act were preoccupied in whole with union activity which they disfavored because it was *not* part of "a *bona fide*" labor dispute"; because it was *not* directed "at securing higher wages for existing employees holding down necessary jobs"; and because the proferred services were indeed "unwanted." It turns the world upside-down to treat, as the Government does, a *bona fide* labor dispute as if it were a fraud; to treat "existing employees holding down necessary jobs" as if they were the same as nonemployees holding down no jobs; and to treat "wanted" services no differently from "unwanted" services.

Whatever criminal scope is given, in interpreting the Hobbs Act, to the exaction of "payment of money for imposed, unwanted and superfluous services", its reach surely does not embrace "the normal demand for wages as compensation for services desired by or valuable to the employer."[27] The two are at opposite

[27] *United States* v. *Kemble*, 198 F.2d 889, 892 (C.A. 3, 1952), cert. denied, 344 U.S. 893 (1952). In *Kemble*, in upholding a conviction under the Hobbs Act, the demand was to hire a man for a day at a wage of about $10, when there was only a few minutes' work left to do, and therefore the jury was free to find that the proferred services were a sham (*id.* at 900, Staley, J., dissenting).

poles. This Court in *Local 807* did not deal with "compensation for services desired by or valuable to the employer"; Congress in reacting to the situation in *Local 807* expressed no displeasure with the legitimacy of union action to secure increased compensation for desired or valuable services; and nothing in the concept of extortion, with whatever conventional or unconventional a sweep it may be read, embraces within its purview securing a union contract from an employer "calling for higher wages and other monetary benefits" for employees whose services the employer wants but who is unwilling to pay the employees what they believe their services are worth.

In short, in the words of the indictment in *Green*, the Hobbs Act reaches exacted payment "for imposed, unwanted, superfluous and fictitious services." At issue in this case, in the words of the indictment here, is a union contract "calling for higher wages and other monetary benefits." The Hobbs Act does not bridge, but designedly maintains the distance between, these two extremes.

2. New York law does not embrace as extortion efforts to secure a collective bargaining agreement establishing higher remuneration for the performance of work.

In defending against the claim that the Hobbs Act was "antilabor" in tenor, its proponents repeatedly asserted that they had done no more than to incorporate into it the conventional definitions of robbery and extortion expressed in the New York statute.[28] It is therefore appropriate to look to New York law for guidance in the interpretation of the Hobbs Act.[29] New

[28] 89 Cong. Rec. 3226 (1943); 91 Cong. Rec. 11842, 11843, 11900, 11910 (1945).

[29] *United States* v. *Nedley*, 255 F.2d 350, 355 (C.A. 3, 1958).

York law refutes any notion that labor action can be extortionate when its end is directed at obtaining a union contract "calling for higher wages and other monetary benefits."

Felonious intent to misappropriate another's property is an essential element of extortion under New York law.[30] "The intent to extort or gain must be wrongful and unlawful 'to obtain that which in justice and equity the party is not entitled to receive.' The ultimate object and intent of the party here accused was not *'lucri causa'* which must always characterize the act."[31] "The unlawfulness lies in the motive. If its purpose be unlawful, then the act (which under other conditions might be justified) becomes unlawful."[32] ". . . [T]he intent of the defendant to do an unlawful injury to the complainant's property was one of the essential elements of the crime."[33]

In New York, therefore, felonious intent to misappropriate property divides the licit from the illicit in determining whether labor action is extortionate. Accordingly, when the object of the activity is the personal enrichment of the actor, rather than the economic

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[30] Note, *Labor Faces The Amended Anti-Racketeering Act*, 101 Penn. L. Rev. 1030, 1037-39 (1953).

[31] *People* v. *Cuddihy*, 151 Misc. 318, 324, 271 N.Y.S. 450, 453 (Ct. Gen. Sess. 1934), aff'd., 243 App. Div. 694, 277 N.Y. Supp. 960 (1935).

[32] *People* v. *Sheridan*, 186 App. Div. 211, 213, 174 N.Y.S. 327, 329 (1919).

[33] *People* v. *Weinseimer*, 117 App. Div. 603, 616, 102 N.Y.S. 579, 588 (1907).

betterment of the worker, it is extortion.[34] On the other hand, where the end which the activity serves is attainment of a legitimate labor objective, there is no extortion because there is no intent to misappropriate property. Thus, "the collection or attempted collection of union dues", where there "is no claim that the dues were used for personal gain as distinguished from union activities . . . [,] cannot be blackmail or extortion. The felonious intent necessary to sustain a conviction for these crimes is wholly lacking."[35] Extortion does not exist where the proof is "insufficient to establish beyond a reasonable doubt" that the accused "was actuated by the purpose of obtaining a financial benefit for himself or his co-defendants and was not attempting in good faith to advance the cause of unionism . . . ."[36]

In short, under New York law, given the objective of securing a union contract "calling for higher wages and other monetary benefits," there can be no extortion because there can be no felonious intent to misappropriate property. In New York, at the time the Hobbs Act was passed, actual or threatened use of violence to obtain an improved union contract constituted the misdemeanor of coercion but not the felony

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[34] *People* v. *Barondess*, 133 N.Y. 649, 31 N.E. 240 (1892); *People* v. *Weinseimer*, 117 App. Div. 603, 102 N.Y.S: 579 (1907); *People* v. *Dioguardi*, 8 N.Y.2d 260, 168 N.E.2d 683 (1960), discussed in *United States* v. *Caldes*, 457 F.2d 74, 77-78 (C.A. 9, 1972).

[35] *People* v. *Gassman*, 182 Misc. 878, 885-886, 45 N.Y.S.2d 709, 715 (Ct. Gen. Sess. 1943), aff'd., 268 App. Div. 377, 51 N.Y.S.2d 173 (1944), aff'd., 295 N.Y. 254, 66 N.E.2d 705 (1946).

[36] *People* v. *Adelstein*, 9 App. Div. 2d 907, 908, 195 N.Y.S.2d 27, 28 (1959).

of extortion.[37] We know of no case in New York, or in any other jurisdiction, where the exertion of wrongful means to secure better employment terms has been suggested, much less held, to be extortionate. And the short and simple reason is that the objective sought is incapable of translation into a felonious intent to misappropriate property.

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[37] See, *People* v. *Kaplan*, 240 App. Div. 72, 269 N.Y.S. 161 (1934), aff'd., 264 N.Y. 675, 191 N.E. 621 (1934). See also, Hearings, 213-214. Section 530 of the New York Penal Law of 1909, in effect when the Hobbs Act was passed, provided that:

> A person who with a view to compel another person to do or to abstain from doing an act which such other person has a legal right to do or to abstain from doing, wrongfully and unlawfully,
>
> 1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property or threatens such violence or injury; or,
> 2. Deprives any such person of any tool, implement or clothing or hinders him in the use thereof; or,
> 3. Uses or attempts the intimidation of such person by threats or force,
>
> Is guilty of a misdemeanor.

A misdemeanor was then punishable by one year imprisonment, a $500 fine, or both (§ 1937). In 1965, effective September 1, 1967, the New York Penal Law of 1909 was repealed and replaced by the New York Penal Law of 1965 (§ § 500.05, 500.10). As part of this change, the old § 530 was incorporated in an expanded version of the crime of coercion consolidating a number of different provisions, it now appearing as § 135.60, coercion in the second degree, a class A misdemeanor punishable at not more than one year imprisonment (§ 70.15), and as § 135.65, coercion in the first degree, a class D felony punishable at not more than seven years imprisonment (§ 70.00(2)(d)).

D. Section 602 of the Labor-Management Reporting and Disclosure Act Shows That It Is not Extortion To Seek "A Bona Fide Increase in Wages or Other Employee Benefits."

The conclusion that the Hobbs Act does not sweep within its scope action taken, however illicit the means, when the end to which the efforts are directed is obtaining a valid collective bargaining agreement is confirmed by viewing it in the "cross light" [38] which is thrown by Congress' enactment in 1959 of section 602 of the Labor-Management Reporting and Disclosure Act.[39] Section 602, revealingly entitled "extortionate picketing," provides that

> (a) It shall be unlawful to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent.
>
> (b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

It is plain on the face of section 602 that it excludes from its purview "a bona fide increase in wages or other employee benefits." Whether the picketing is extortionate thus turns on the end to which it is directed. There is simply no extortion when the end sought is "a bona fide increase in wages or other employee benefits." Congress in section 602, in prohibit-

[38] *Pipefitters Local Union 562* v. *United States*, 40 U.S.L.W. 4786, 4795 (S. Ct., June 22, 1972).

[39] 73 Stat. 539, 29 U.S.C. § 522.

ing extortionate picketing, has expressed explicitly the meaning which inheres in the Hobbs Act as well.

The legislative history of section 602 is especially instructive because it shows that Congress has deliberately linked section 602 with the Hobbs Act. Section 602, when first referred to the Senate Labor Committee in 1959, began as an amendment to section 8(b) of the National Labor Relations Act and made it an unfair labor practice for a labor organization or its agents:[40]

> to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual by taking or obtaining any money or other thing of value from such employer against his will or with his consent.

As reported by the Senate Labor Committee, two alterations were made in this provision. The parenthetical qualification excluding "a bona fide increase in wages or other employee benefits" was added, and the offense was changed from an unfair labor practice to a misdemeanor punishable by a fine of not more than $10,000 or imprisonment for not more than one year or both.[41] The substantive offense now read as follows:

> It shall be unlawful to carry on picketing on or about the premises of any employer for the pur-

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[40] S. 505, 86th Cong., 1st Sess., § 602(a), January 20, 1959, in 1 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 76 (1959), hereafter cited as "Leg. Hist. LMRDA."

[41] S. 1555, 86th Cong., 1st Sess., § 111, March 25, 1959; S. Rep. No. 187, 86th Cong., 1st Sess., 67-68 (1959); in 1 Leg. Hist. LMRDA 362-363, 463-464.

> pose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent.

The Senate Report described the evil against which the prohibition was aimed:[42]

> It would . . . make it a criminal offense for a labor organization to conduct "shakedown" picketing, i.e., picketing with no legitimate purpose but which is to force an employer to "buy off" the union official involved. The subsection bans picketing to exact from the employer a payment for the enrichment of an individual as distinguished from bona fide picketing, the purpose of which is improvement in wages and working conditions of employees.

Senators Goldwater and Dirksen, who claimed authorship of the changes in committee, explained that they had corrected "faulty draftsmanship" which "would have prevented a union from picketing for a pay increase or any other legitimate economic benefit."[43]

Thus, "shakedown" picketing or "extortion" picketing was the mischief at which the prohibition was aimed, as distinct from picketing for an "improvement in wages and working conditions of employees." And the explicit exclusion of "a bona fide increase in wages or other employee benefits" was a perfecting correction of "faulty draftsmanship" designed to assure the pro-

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[42] S. Rep. No. 187, 86th Cong., 1st Sess., 43 (1959), in 1 Leg. Hist. LMRDA 439.

[43] *Id.* at 92, in *id.* at 488.

tection of "picketing for a pay increase or any other legitimate economic benefit."

Section 602 took its final shape on the Senate floor. Senator McClellan expressed the concern of the Justice Department that section 602 prescribed a lesser punishment than imposed by the Hobbs Act:[44]

> The Justice Department is greatly concerned about what we are proposing to do to the Hobbs Act, which provides a penalty for extortion up to as high as 20 years imprisonment, whereas the bill under consideration would reduce the penalty, as I recall, to 1 year. That is a serious matter.

To allay this concern, Senators John F. Kennedy and McClellan joined in proposing an amendment which retained the substantive offense intact, but which altered the punishment to provide that "Any person who willfully violates this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $10,000 or to imprisonment for not more than twenty years, or both."[45] The sanctions for violation of section 602 and the Hobbs Act were thus exactly aligned. Senator Kennedy explained that:[46]

> Under the provisions of the Kennedy-Ervin bill last year we provided that anyone who engaged in picketing for the purpose of a shakedown should be guilty of an unfair labor practice. That was an additional remedy, to be available in addition to the Hobbs Act.
>
> There has always been some question as to whether the Hobbs Act applied to cases in which

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[44] 105 Cong. Rec. 6288-89 (1959), in 2 Leg. Hist. LMRDA 1050.

[45] 105 Cong. Rec. 6530 (1959), in 2 Leg. Hist. LMRDA 1135.

[46] *Ibid.*

violence did not take place. In addition, this provision provided a quicker remedy. It provided for compulsory immediate injunction, while the criminal prosecution might be going on.

There was some objection to making this practice an unfair labor practice, and a felony rather than a misdemeanor. The Department of Justice raised the question 3 or 4 days ago as to whether this provision might not raise some question as to the sanctions available under the Hobbs Act. Therefore, in order to make sure that there is no choice of sanctions, as between those which might be misdemeanors and those which might be felonies, the amendment is now rewritten, so that the sanctions against using a picket line for the purposes of extorting money are now identical with those under the Hobbs Act.

This provision would not weaken or change the Hobbs Act. It would merely provide that when there is any question as to whether the Hobbs Act applies in cases in which violence does not occur—as in the case of shakedown picketing—adequate sanctions are provided. This language is in accordance with the views of the Department of Justice.

Thus, in enacting section 602, Congress' purpose was to ensure that, if the conduct were not already reached and punishable by the Hobbs Act,[47] nonviolent picketing

[47] The Hobbs Act unquestionably reaches actual or threatened "labor trouble" designed for the purpose of securing the personal enrichment of the actor or another; such conduct is within the traditional target of an anti-racketeering prosecution under the Hobbs Act. *E.g., United States* v. *Kramer*, 355 F.2d 891 (C.A. 7, 1966), certiorari granted and cause remanded for resentencing but otherwise certiorari denied, 384 U.S. 100 (1966); *United States* v. *Provenzano*, 334 F.2d 678 (C.A. 3, 1964); *United States* v. *Palmiotti*, 254 F.2d 491 (C.A. 2, 1958).

would be reached by section 602 and identically punishable when its purpose was "the personal profit or enrichment of any individual"—the "shakedown," the "buy off," the "payoff."[48] As explained by Senator Goldwater in a question-and-answer analysis:[49]

> Question. Now let's get to picketing. Just what kind of picketing is involved and what will the new law do about it?
>
> Answer. Well, first of all there is what they call extortionate picketing. This is made a crime punishable by $10,000 and imprisonment for not more than 20 years.
>
> Here is what is meant by extortionate picketing: Extortionate picketing is completely phony, phony in this sense: That the purpose of the picket line has absolutely no connection with any labor-union objective, such as wages, working conditions, organizing the employees—nothing like that.
>
> Its simple purpose is exactly the same as that of a man pointing a gun at you and saying, "If you don't give me your money I'll shoot you. Give me the money and I'll remove the gun." That's what the purpose of this picket line is. It's to go to the employer and say, "For $5,000 you can have the picket line removed." That's just one.
>
> Question. They are not demanding that he unionize?
>
> Answer. That's right. They are not interested in that. The purpose of this picket line has nothing to do with any union affair. They are merely using a union device to extort money.

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[48] 105 Cong. Rec. 885 (1959), in 2 Leg. Hist. LMRDA 969 (Senator Kennedy).

[49] 105 Daily Cong. Rec. A8357 (1959), in 2 Leg. Hist. LMRDA 1828.

For those Senators who believed that nonviolent "shakedown" picketing was already a crime under the Hobbs Act, section 602 avowedly added nothing. "This [section 602] makes it a crime to picket for the purpose of compelling the picketed employer to pay off an 'individual' in order to get rid of the picket line. Again, this is naked extortion and is already a crime both under State and Federal law (the Hobbs Act)." [50] But whether section 602 is supplemental or redundant, it explicitly and designedly does not reach as extortionate "a bona fide increase in wages or other employee benefits." When Congress addresses extortion, it does not speak of wage increases or other improvements in employee benefits. The indictment in this case, in alleging as extortionate the obtaining of a union contract "calling for higher wages and other monetary benefits," is thus wholly alien to the premises on which Congress has acted.

E. The Government's Argument Is in Conflict With the Conventional Concept of Extortion and With the Purpose, History, and Administration of the Hobbs Act.

The Government's argument does not address ours. We turn to what it does say.

1. The central fallacy in the Government's position is epitomized in its statement that "higher wages obtained for wanted services through threats or acts of violence stand on no different footing under the Hobbs Act than wages for unwanted services similarly obtained" (Br. p. 10). The Government thus cuts off extortion from its roots in the felonious misappropria-

[50] S. Rep. No. 187, 86th Cong., 1st Sess., 99 (1959), in 1 Leg. Hist. LMRDA 495 (Senators Goldwater and Dirksen). See also, 105 Cong. Rec. 6430, 7631, 10099, in 2 Leg. Hist. LMRDA 1081, 1271, 1285 (Senator Goldwater).

tion of property and treats the offense as if it were founded in violence simpliciter. For to obtain higher wages for wanted services is simply not misappropriation of property. The worker only gets what he believes his work is worth even though that may be more than the employer would like to pay for it. Violence is not a lawful means to fix the level of compensation but violence standing alone is not extortion. And it stands alone when it is divorced from felonious misappropriation of property. Violence simpliciter does not make out extortion any more than violence simpliciter makes out an antitrust violation not otherwise established[51] or a secondary boycott whose elements are otherwise lacking.[52] Violence as such is punishable but not as extortion.

The Government's dissociation of extortion from felonious misappropriation of property is a new thought for it. When it argued the *Local 807* case, it understood the difference between violence simpliciter and extortion, and it expressed the distinction as follows in its brief to this Court in that case (p. 46):

> If the defendants had been seeking to achieve a legitimate labor objective, we doubt whether their activities would come within the scope of the Act simply because of the presence of violence. The whole tenor of the Act indicates that Congress intended to punish activities similar to extortion; violence used as a means of obtaining a lawful labor union objective is not extortion but simply a breach of the peace or other kindred unlawful act.

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[51] *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 513 (1940).

[52] *International Rice Milling Co.* v. *N.L.R.B.*, 341 U.S. 665, 672 (1951); *United Steelworkers* v. *N.L.R.B.*, 376 U.S. 492, 501-502 (1964).

Until the indictments were returned in 1970 in this case and contemporaneously in three others (*supra*, pp. 7-8), except for one instance in 1962 which resulted in an acquittal,[58] the Government did not in the twelve years of the Federal Anti-Racketeering Act of 1934 or the 24 years of the Hobbs Act of 1946 ever prosecute as extortion violence employed to secure a union contract "calling for higher wages and other monetary benefits." Yet throughout this time there were countless strikes for improved employment terms in which violence occurred; in many the strikes were prominent and the violence serious. They were often the subject of litigation before the courts or the National Labor Relations Board. They were matters of obvious public notice. They would hardly have escaped the attention of the United States Attorneys in the areas in which the strikes took place or of the Justice Department. Yet no Hobbs Act prosecutions were instituted. It is to the last degree unlikely that the seminal significance now attributed to the Hobbs Act could have for so long been so undiscerned.

What the Justice Department failed to discern similarly evaded the notice of Congress. In 1947, within less than a year of the enactment of the Hobbs Act in 1946, Congress passed section 8(b)(1)(A) of the National Labor Relations Act, making it an unfair labor practice for a union "to restrain or coerce employees in the exercise of the rights guaranteed in section 7"; this prohibition, a supplement to the exercise of state power to control violence, reaches "union tactics involving violence, intimidation, and reprisal or threats thereof . . ." (*infra*, p. 58). Thus, "the use of violence during a strike . . . was the subject of con-

[58] *United States* v. *George Samuel Webb*, N.D.Ala. No. 15080.

gressional attention the year following enactment of the Hobbs Act. The Taft-Hartley Act contained specific provisions which condemned this action as unfair labor practices . . . . It is significant that during congressional deliberation on the bill no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress." *United States* v. *Caldes,* 457 F.2d 74, 78 (C.A. 9, 1972).

Contemporaneous understanding and administration is a better guide to meaning than latter-day imagination and zeal.

2. The Government relies upon the legislative history of the Hobbs Act to support its expansive reading of extortion (br. pp. 13-19). But that history, as we have shown, confines Congress' objective at maximum to exacted payment for "imposed, unwanted, superfluous and fictitious services" (*supra,* pp. 27-31, 34-37). The Government's distortion of the history is illustrated by its major reliance on the statement of Representative Michener that workers are not exempt from the Hobbs Act when "by robbery or exploitation" they "collect a day's wage—a union wage" (Br. p. 15). Representative Michener thus protests the collection of " a day's wage" by "robbery or exploitation," and the reference to "robbery or exploitation" returns us to extortion—the felonious misappropriation of property—as the offense, not to violence simpliciter. The point is put beyond doubt by the Government's elision from Representative Michener's statement. His statement continues as follows: "Mr. Speaker, I cannot understand how any union man can claim that the conduct described by Mr. Justice Stone is a legitimate union activity" (91 Cong. Rec. 11844 (1945)). Justice

Stone's point in *Local 807* was limited to violent coercion of payment for a stand-by job, which the employer rejected, and where no actual services were to be rendered (*supra*, p. 28). It has nothing to do with compensation for work which the employer wants performed but for which he is unwilling to pay what the worker thinks it is worth.

The Government relies on the rejection of an amendment to the bill proposed by Representative Celler which would except from coverage "wages paid by a bona fide employer to a bona fide employee" (91 Cong. Rec. 11913, 11919 (1945)), and on the rejection of an amendment proposed by Representative LaFollette which would except from coverage "the payment of wages paid by a bona fide employer to a bona fide employee" unless use or threat of "force or violence against the body or to the physical property (as distinguished from intangible property)" is employed to compel payment (91 Cong. Rec. 11919, 11922 (1945)) (Br. pp. 17-18). Both amendments were rejected, however, solely because of fear that each would operate to continue the legality of the disfavored conduct revealed in the *Local 807* decision. Thus, Representative Hobbs objected to the Celler amendment because it "would invite . . . the same error" as in the *Local 807* decision; agreeing with Representative Jennings, he protested that, unless the Court were to repudiate the basis of its decision in *Local 807*, reiteration of the same words "already . . . passed on" would result in "exactly" the same decision (91 Cong. Rec. 11914 (1945)). As Congressman Walters put it *(ibid.)*:

> . . . [T]o adopt the amendments offered . . . would result in an action that would be tantamount to doing nothing, because the language of the amend-

> ment is designed to retain the law in its present status. There is no question about that.

The same objection was voiced to the LaFollette amendment as expressed by Representative Gwynne (*id.* at 11920-21):

> . . . [Should the amendment be adopted] we would then have marched up the hill and marched down again, because the law would be exactly the same as it is now.
>
> * * *
>
> The amendment offered . . . would leave those words right in the law and it would be an open invitation to the Supreme Court to decide that [*Local 807*] case the same, if it should come before them again; in fact, if they believe in stare decisis over there—about which I sometimes wonder—they would be obligated to affirm their decision because the Congress had in effect affirmed the statute which the Court had construed in a certain way. In addition to that there are some other provisos in here which purport to make a sort of change in our notion of robbery. Intangible property is spoken of . . . .
>
> The amendment offered . . . does not mean a thing. If you are opposed to the bill, defeat the bill if you want to, but let us not kid ourselves by putting in this amendment because if we do we will have accomplished nothing to right the wrongs about which we have been complaining.

Accordingly, the Celler and LaFollette amendments were rejected because of fear that their adoption would leave the *Local 807* decision intact. Their rejection provides no support for innovation of a new concept of extortion divorced from the felonious misappropriation of property and resting on violence alone. We need hardly add that, contrary to the Government's

suggestion (Br. pp. 16-17), we look to the views of the proponents, not to the apprehension of the opponents, for a reliable guide to statutory interpretation.[54]

3. The Government relies on three cases said to support its expansive notion of extortion (Br. pp. 12-13). None do.

In *Battaglia* v. *United States,* 383 F.2d 303 (C.A. 9, 1967), cert. denied, 390 U.S. 907(1968), the wrongful means employed were an implied threat of murder and an actual threat of physical damage to property, and the felonious misappropriation of property which made those threats extortion was the expropriation of space from the victim in his bowling alley for a coin-operated pool table and a share of the profits from its operation. In *United States* v. *Tropiano,* 418 F.2d 1069 (C.A. 2, 1969), cert. denied, 397 U.S. 1021 (1970), the wrongful means employed were threats of personal physical violence, and the felonious misappropriation of property which made those threats extortion was to force the victim to cease engaging in a competitive business (*id.* at 1072, 1075). In *United States* v. *Glasser,* 443 F.2d 994 (C.A. 2, 1971), cert. denied, 404 U.S. 854 (1971), the wrongful means employed were to spray acid on windows installed by nonunion glaziers, and the felonious misappropriation of property which made that activity extortion was to force the victims into an unwanted business relationship by requiring them to engage glaziers they would not otherwise have employed, reminiscent of "the employment . . . by duress and coercion" where no genuine relationship existed or was in prospect against which Representative Hobbs spoke (*supra,* p. 28).

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[54] *N.L.R.B.* v. *Fruit and Vegetable Packers,* 377 U.S. 58, 66 (1964).

In all three cases, accordingly, wrongful means *plus* felonious misappropriation of property were conjoined to establish extortion. None analytically support a view that resort to wrongful means alone suffices to prove extortion. And none begins to suggest that the end sought here—identified by the Government as "higher wages for wanted services as in the present case" (Br. p. 16)—remotely resembles felonious misappropriation of property.

4. When the Government would convert an extortion statute into a medium by which to reach violence simpliciter in labor disputes, it wrenches industrial violence from its societal context, disregards the traditional means by which that wrong has been regulated, works a gross distortion of state-federal relations in this area, and disserves other important interests. This subject merits separate consideration and we undertake it in Part II of this brief which follows.

II. INDUSTRIAL VIOLENCE CANNOT BE REACHED BY A FEDERAL EXTORTION STATUTE WITHOUT WRENCHING IT FROM ITS SOCIETAL SETTING AND DISLOCATING THE EXISTING MEANS BY WHICH IT IS CONTROLLED.

A. The Societal Setting of Industrial Violence.

Strike violence, while happily diminishing, is an indelible part of the industrial scene in the United States.[55] "The United States has had the bloodiest and most violent labor history of any industrial nation in the world. Labor violence was not confined to certain

[55] P. Taft and P. Ross, American Labor Violence: Its Causes, Character And Outcome, 221-301, in H. Graham and T. Gurr, Violence In America: Historical And Comparitive Perspectives, A Report to the National Commission On The Causes And Prevention Of Violence (June 1969).

industries, geographic areas, or specific groups in the labor force, although it has been more frequent in some industries than in others. There have been few sections and scarcely any industries in which violence has not erupted at some time, and even more serious confrontations have on occasion followed."[56]

"At different times employers and workers have played the roles of aggressors and victims";[57] "Employers and unions were both guilty of violence."[58] Union violence is often a reaction to employer provocation and obduracy.[59] "In some cases employers have directed detective agencies to perform acts of violence, or have instigated such acts, or have made their commission inevitable. This has been done either to discredit strikers because of such acts, to break their morale by the use of physical force, or to create a disorderly situation of such proportions that the armed intervention of the State will be required to suppress it."[60] "With a few exceptions, labor violence was the result of isolated and usually unplanned acts on a picket line, or occurred during a prohibited parade or demonstration protesting employer obduracy or police brutality."[61] "It is the violent encounters that have provided organized labor with its list of martyrs, men and women who gave their lives in defense of the union and collective bargaining."[62]

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[56] *Id.* at 221.

[57] *Ibid.*

[58] *Id.* at 289.

[59] *Id.* at 289-290.

[60] S. Rep. No. 6, Part 1, 76th Cong., 1st Sess., Violations of Free Speech and Rights of Labor, 137 (1939), and *passim* 97-114, 135-137.

[61] P. Taft and P. Ross, *supra*, at 291.

[62] *Id.* at 290.

The unhappy story of industrial violence is chronicled in the decisions of this Court. The "history of the bituminous coal industry is written in blood as well as ink." *Sunshine Anthracite Co.* v. *Adkins,* 310 U.S. 381, 395 (1940). Railroad strikes have been marked by violent clashes resulting in personal attacks, property damage, and interruption of service. *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western Railroad,* 321 U.S. 50, 53 (1944). A city-wide dispute was marred by "window-smashing, bombings, burnings, the wreckage of trucks, shootings, and beatings...." *Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U.S. 287, 292 (1941). A local strike escalated into forcible seizure of the plant, wreckage of machinery, and brutal violence. *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 482 (1940). The passion and intensity of the conflict regrettably but predictably breeds strike violence.[63]

B. The Existing Legal Means of Controlling Industrial Violence

The labor movement has never countenanced strike violence as a means of achieving its ends.[64] And the law has never allowed it. The legal sanctions to control and punish strike violence are many and forceful.

1. The willful commission of strike violence is a crime in every state. State criminal law fastens onto

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[63] *N.L.R.B.* v. *Fansteel Metallurgical Corp.,* 306 U.S. 240, 249 (1939); *Allen-Bradley Local No. 1111* v. *W.E.R.B.,* 315 U.S. 740 (1942); *United Construction Workers* v. *Laburnum Construction Corp.,* 347 U.S. 656 (1954); *Youngdahl* v. *Rainfair,* 355 U.S. 131 (1957); *International Union, U.A.W.* v. *Russell,* 356 U.S. 634 (1957); *United Mine Workers* v. *Gibbs,* 383 U.S. 715 (1966).

[64] P. Taft and P. Ross, *supra,* at 222.

it severely. Thus a conspiracy to dynamite the boiler room of a cotton mill, the main office building of another cotton mill, and the substation of an electrical utility resulted in sentences of 6 to 10 years imprisonment. *State* v. *Walker,* 251 N.C. 465, 112 S.E. 2d 61 (1960), cert. denied, 364 U.S. 832 (1960).

2. Injunctions to stop strike violence are issued by state courts (*Youngdahl* v. *Rainfair,* 355 U.S. 131 (1957)), and state agencies (*Allen Bradley Local No. 1111* v. *W.E.R.B.,* 315 U.S. 740, (1942)). Disobedience results in civil and criminal contempt convictions with sanctions running the gamut of imprisonment, fines, and damages.

3. Strike violence is reached by civil actions to recover compensatory and punitive damages. *United Construction Workers* v. *Laburnum Construction Co.,* 347 U.S. 656 (1954); *International Union, U.A.W.* v. *Russell,* 356 U.S. 634 (1957). Judgments in the sum of $1,754,387.25 in compensatory and exemplary damages, reversed for reassessment of damages, were entered for the injury caused when, among other violence, "strikers marched by the hundreds, shoulder to shoulder, at the gates of the . . . plant, massed at the gates and blocked vehicles containing employees attempting to enter or leave, physically attacked employees attempting to enter or leave in automobiles or on foot, made contemptuous and threatening gestures to employees, shouted profanities, obscenities and threats of physical harm, shoved, pushed, slapped and scratched employees, and broke mirrors and radio antennas and windows of automobiles attempting to enter or leave the plant." *United Aircraft Corp.* v. *International Association of Machinists,* 161 Conn. 79,

92-93, 285 A.2d 330, 339 (1971), cert. denied, 404 U.S. 1016 (1972).

4. Section 8(b)(1)(A) of the National Labor Relations Act makes it an unfair labor practice for a union "to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7", and this prohibition bars "physical violence and threat thereof" directed at employees for refraining from strike activity. *Sunset Line and Twine Co.*, 79 NLRB 1487, 1505 (1948). It supplements state power to control violence whether committed by employers or unions. *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U.S. 656, 668-669 (1954). It authorizes the National Labor Relations Board "to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof . . . ." *N.L.R.B.* v. *Drivers Local Union No. 639*, 362 U.S. 274, 290 (1960).

5. An employee's commission of strike violence subjects him to discharge or discipline by his employer for his misconduct. The National Labor Relations Board, in determining whether the employer's action is valid, looks to whether the strike misconduct is "of such a character as to render . . . [the] employees unsuitable for reemployment."[65] The totality of the strike situation is realistically appraised.[66] An em-

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[65] *Kansas Milling Co.*, 86 NLRB 925, 928 (1949), enforced in this respect, 185 F.2d 413, 420 (C.A. 10, 1950).

[66] *N.L.R.B.* v. *Illinois Tool Works*, 153 F.2d 811, 815-816 (C.A. 7, 1946); *N.L.R.B.* v. *Wallick and Schwalm*, 198 F.2d 477, 484-485 (C.A. 3, 1952); *N.L.R.B.* v. *Cambria Clay Products Co*, 215 F.2d 48, 54 (C.A. 6, 1954).

ployer's commission of unfair labor practices causing or prolonging a strike is itself a discrete factor which must be independently considered in extenuation of any employee misconduct which takes place during the strike.[67] The National Labor Relations Board, "as a part of the process of determining whether reinstatement would effectuate the policies of the Act, will balance the severity of the employer's unfair labor practice which provoked the industrial disturbance against whatever employee misconduct may have occurred in the course of the strike." [68]

Finally, the informed evaluation of employee strike violence is infused with the insight that "some disorder is unfortunately quite usual in any extensive or long drawn out strike. A strike is essentially a battle waged with economic weapons. Engaged in it are human beings whose feelings are stirred to the depths. Rising passions call forth hot words. Hot words lead to blows on the picket line. The transformation from economic to physical combat by those engaged in the contest is difficult to prevent even when cool heads direct the fight. Violence of this nature, however much it is to be regretted, must have been in the contemplation of the Congress when it provided in Section 13 of the Act, . . . that nothing therein should be construed so as to interfere with or impede or diminish

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[67] *N.L.R.B.* v. *Thayer Co.*, 213 F.2d 748, 753, 754, 755, 756-757 (C.A. 1, 1954), cert. denied, 348 U.S. 883 (1954).

[68] *Id.* at 755. See also, *Local 833, UAW* v. *N.L.R.B.*, 300 F.2d 699 (C.A.D.C., 1962), cert. denied, 370 U.S. 911 (1962); on remand in latter case, *Kohler Co.*, 148 NLRB 1434 (1964), enforced, 345 F.2d 748 (C.A.D.C. 1965), cert. denied, 383 U.S. 836 (1965); *Blades Mfg. Corp.*, 144 NLRB 561, 566-567 (1963).

in any way the right to strike. If this were not so, the rights afforded to employees by the Act would be indeed illusory." *Republic Steel Corp.* v. *N.L.R.B.*, 107 F.2d 472, 479 (C.A. 3, 1939), modified on another ground, 311 U.S. 7 (1940).

C. The Interests Disserved by Reading the Hobbs Act To Reach Strike Violence Standing Alone.

Given the distinctive societal setting of strike violence in this country, and the existing traditional means by which legal control is exercised over it, the conversion of an extortion statute into an instrument by which to reach strike violence simpliciter is alien both to the idea of extortion and to strike violence as a wrong. To join the two would be to dislocate important interests.

1. The legal control of strike violence, by both criminal and civil means, is essentially and primarily within the province of the States. State law bears the burden of regulation, the role of federal law being marginal and supplemental. A reading of the Hobbs Act to reach strike violence as such would mark a major federal encroachment upon a traditional state domain. That reading is subject to the same infirmity that this Court discerned in the Government's construction of the Travel Act in *Rewis* v. *United States*, 401 U.S. 808 (1971), and in its construction of Title VII of the Omnibus Crime Control and Safe Streets Act in *United States* v. *Bass*, 404 U.S. 336 (1971). As with each of these statutes, so with the Hobbs Act, "[b]ecause its sanctions are criminal and because, under the Government's broader reading, the statute would mark a major inroad into a domain traditionally left to the

States, we refuse to adopt the broad reading in the absence of a clearer direction from Congress." *United States* v. *Bass,* 404 U.S. 336, 339 (1971). The rationale of this conclusion applies with full force in this case (*id.* at 349-350):

> . . . [U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the Federal-State balance. Congress has traditionally been reluctant to define as a crime conduct readily denounced as criminal by the States . . . . [W]e will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction. In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision . . . . In the instant case, the broad construction urged by the Government renders traditionally local criminal conduct a matter for federal enforcement and would also involve a substantial extension of federal police resources. . . . [It] dramatically intrudes upon traditional state criminal jurisdiction. . . . [T]he legislative history provides scanty basis for concluding that Congress faced these serious questions and meant to affect the federal-state balance in the way now claimed by the Government.

". . . [T]he States under our federal system have the principal responsibility for defining and prosecuting crimes." *Abbate* v. *United States,* 359 U.S. 187, 195 (1959). The strong disinclination against sweeping within the federal criminal law conduct which is traditionally within the mainstream of state criminal law is greatly reinforced in the area of strike violence

by the explicit and affirmative direction of Congress expressed in the Norris-LaGuardia Act.[69] That Act's prohibition against the issuance of an injunction by a federal court in a labor dispute does not extend to conduct involving "fraud or violence" (§4(e), (i)). But before an injunction barring violence may issue the federal court is required to find *inter alia* that "the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection" (§ 7(e)). A breakdown in state protection is therefore the indispensable precondition to federal intervention even in the civil area.[70] Congress could hardly have intended to reach strike violence by its criminal process when it refuses to brook civil entry where adequate state protection is available. *Cf., United States* v. *Hutcheson,* 312 U.S. 219, 234-235 (1941).

2. The Government's expansive reading of the Hobbs Act would bear with especial severity on the individual who is accused of strike violence. All strike violence would be swept within the scope of the Hobbs Act, from the fist fight to murder, from a deflated tire to arson, and all would be subject to the same Draconian punishment of twenty years imprisonment and a $10,000 fine. In contrast, as Louisiana law illustrates (*supra,* pp. 5-7), state law is much more circumspect, making careful distinctions in the gravity of the particular wrong and the harm it causes, and moderat-

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[69] 29 U.S.C. § 101 (1964).

[70] *E.g., Cimarron Coal Corp.* v. *District No. 23, U.M.W.,* 416 F.2d 844 (C.A. 6, 1969), cert. denied, 397 U.S. 919 (1970); *Donnelly Garment Co.* v. *Dubinsky,* 154 F.2d 38 (C.A. 8, 1946).

ing the punishment to fit the crime.[71] It is highly unlikely that, had Congress indeed faced the question of strike violence and decided to control it as a federal crime, it would not have graded both the particular offense and the corresponding punishment as state law ordinarily does.[72]

But the severity on the individual does not stop with the impact of the Hobbs Act standing alone. For, under the law as it now is, successive state and federal prosecutions for the same offense are not barred, the alleged misconduct being considered a separate crime under state and federal law separately punishable by each sovereign.[73] Under this regime, an accused convicted of strike violence constituting aggravated arson could be sentenced to twenty years imprisonment by Louisiana and another twenty years imprisonment by

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[71] See, Model Penal Code, Proposed Official Draft, American Law Institute, July 30, 1962, which, as to arson, criminal mischief, and other property destruction, variously grades the offense as felony of the second degree, felony of the third degree, or misdemeanor based on the circumstances of its commission (Art. 220). For variation in the punishment based on the difference in grading, see *id.*, Art. 6.

[72] See, Final Report of the National Commission on Reform of Federal Criminal Laws, A Proposed New Federal Criminal Code (1971), which, as to arson and other damage to property within federal jurisdiction, variously grades the offense as a Class B or C felony or a Class A or B misdemeanor based on the circumstances of its commission (§§ 1701-05). In its comment on § 1705, criminal mischief, the Report states that, "This section is intended to provide a rational grading structure for the numerous property-damage and property-tampering provisions in existing law which are consolidated in it" (p. 197). For variation in punishment based on the grading of the offense, see §§ 3201-05, 3301-04.

[73] *Bartkus* v. *Illinois*, 359 U.S. 121 (1959); *Abbate* v. *United States*, 359 U.S. 187 (1959).

the United States. Thus, under the Government's view, Congress doubled the punishment for the offense by adding federal to state sanctions. It is to the last degree unlikely that in enacting the Hobbs Act Congress confronted or intended any such result.

On the other hand, were the law to become that a federal prosecution bars a state prosecution for the same alleged offense,[74] the plight of the accused individual would be alleviated, but at the cost of the State's interest in doing its own work of preserving local order. The happenstance of a federal prosecution would oust the State in the vindication of an essential state concern, a major dislocation of the federal-state balance.

Each alternative flowing from acceptance of the Government's position is therefore seriously detrimental. Either the accused individual is exposed to double prosecution and vastly increased punishment, or the State's interest in preserving local order is subordinated. But the dilemma exists only because the Government would expand the Hobbs Act beyond its limited role. It disappears once the Hobbs Act is given its natural modest scope.

3. The extension of the Hobbs Act to reach strike violence "could overextend limited federal police resources . . . ." *Rewis* v. *United States*, 401 U.S. 808, 812 (1971); *United States* v. *Bass*, 404 U.S. 336, 349-

[74] *Cf.*, *Benton* v. *Maryland*, 395 U.S. 784 (1969); *Ashe* v. *Swenson*, 397 U.S. 436 (1970). Concurring in *Ashe* v. *Swenson*, *supra*, Mr. Justice Black observed that: "On several occasions I have stated my view that the Double Jeopardy Clause bars a State or the Federal Government or the two together from subjecting a defendant to the hazards of trial and possible conviction more than once for the same alleged offense" (*id.* at 447).

350 (1971). There are simply not enough federal law officers to begin to police strike violence erupting everywhere and anywhere in the United States. Nor should the added burden upon an overworked federal court system be overlooked. The implication of these factors is not limited to the unlikelihood that Congress would dilute federal police resources or further tax the federal judiciary by expending their energy on matters that local authority can handle at least as well. The implication of inadequate federal police resources is far more fundamental and fateful as it relates to the preservation of the evenhanded administration of justice. For if federal police resources are not adequate to the task, the inevitable consequence will be that federal law will be applied haphazardly, erratically, or invidiously. It will vary from situation to situation and from community to community dependent on the accident of the preoccupation, zeal, interest, or worse of a particular United State Attorney. That environment breeds "arbitrary and erratic arrests and convictions." *Papachristou* v. *City of Jacksonville,* 405 U.S. 156, 162 (1972). No interpretation of a statute is acceptable which unnecessarily commits "matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned* v. *City of Rockford,* 40 U.S.L.W. 4881, 4882 (S. Ct., June 26, 1972).

4. To moderate the sweep of its reading of the Hobbs Act, the Government would except from the strike violence it would reach "incidental injury to person or property that not infrequently occurs as a consequence of the charged atmosphere attending a prolonged labor dispute . . ." (Br. p. 19). But this retreat compounds the vice of its position. For the Government has now created an unknowable crime,

one that is void for vagueness. No one can say what strike violence is "incidental" and what is not, when the intention to commit it should be excused because energized by emotion, how "prolonged" a labor dispute must be before its duration justifies disregard of violence because it is the product of frustration, and at what level the degree of violence overbalances the provocation which causes it.

The Constitution prohibits guessing a man into the penitentiary by committing to the police, judges, and juries the assessment of such unbounded imponderables. "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and juries to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." *Giaccio* v. *Pennsylvania,* 382 U.S. 399, 402-403 (1966). The Government's rendering suffers from the twin infirmities that the lines it purports to fix are too blurred to identify an ascertainable standard of conduct (*International Harvester Co.* v. *Kentucky,* 234 U.S. 216, 221-224 (1914); *Connally* v. *General Construction Co.,* 269 U.S. 385, 391 (1926)), and that it necessarily invites "arbitrary and erratic arrests and convictions." *Papachristou* v. *City of Jacksonville,* 405 U.S. 156, 162 (1972); *Grayned* v. *City of Rockford,* 40 U.S.L.W. 4881, 4882 (S. Ct. June 26, 1972). The Government cannot salvage its overboard reading of the Hobbs Act by inventing a limited construction which is itself so imprecise that it "leaves open . . . the widest conceivable inquiry, the scope of which no one can foresee, and the result of which no one can foreshadow or adequately guard against." *United States* v. *Cohen Grocery Co.,* 255 U.S. 81, 89 (1921).

Moreover, the Government's position is internally inconsistent. Actual or threatened injury to person or property, however minor, intentionally inflicted for the purpose of feloniously misappropriating another's property would constitute extortion within the meaning of the Hobbs Act, as the Government would doubtless insist. For example, it surely would not say that minor violence employed by a faithless union official to extract money for his personal enrichment is not extortion. Yet in this case it draws a distinction between major and minor violence. The Government is driven to this distinction, not because the distinction is analytically supportable in defining extortion, but because it has divorced extortion from the felonious misappropriation of property. Given that sunderance, it is forced into a major-minor distinction, for otherwise all industrial violence would be swept into the extortion hopper, a result offensive to common sense and to the reality of the cause, incidence and conventional control of industrial violence. The need for a major-minor distinction disappears once the element of felonious misappropriation of property is restored as an indispensable constituent of extortion. For the familiar element of felonious misappropriation of property, not the alien import of a major-minor distinction in the means employed, then provides the balance to maintain a sensible application of the Hobbs Act crime of extortion.

5. We thus return to our starting point. The Hobbs Act crime of extortion is a "larceny-type" offense.[75] It is not stealing to seek a union contract "calling for higher wages and other monetary benefits." This is not the target at which Congress aimed. It cannot be

[75] *United States* v. *Sweeney*, 262 F.2d 272, 275 (C.A. 3, 1959).

called "levying tribute,"[76] "highway robbery,"[77] the work of "gangsters,"[78] "lawless bandits,"[79] "racketeers."[80] As is required in the interpretation of a criminal statute, giving the Hobbs Act a strict but sensible construction (*Arroyo* v. *United States,* 359 U.S. 419, 424 (1959)), in keeping with the rule in favor of lenity (*Rewis* v. *United States,* 401 U.S. 808, 812 (1971)), it cannot be read to reach strike violence when the violence is not conjoined with the felonious misappropriation of property. To seek an improved union contract is not to misappropriate another's property with felonious intent and therefore cannot be extortion. "The spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute." *Morissette* v. *United States,* 342 U.S. 246, 263 (1952).

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[76] H. Rep. No. 238, 79th Cong., 1st Sess., 10 (1945); 91 Cong. Rec. 11904, 11950 (1945).

[77] 91 Cong. Rec. 11901, 11904, 11907, 11910, 11911, 11917 (1945).

[78] 91 Cong. Rec. 11910 (1945).

[79] 91 Cong. Rec. 11912 (1945).

[80] 91 Cong. Rec. 11917 (1945).

CONCLUSION

For the reasons stated, the judgment should be affirmed.

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Supreme Court of the United States

October Term, 1972

No. 71-1193

UNITED STATES OF AMERICA, *Appellant*

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON AND MILTON RAY WOODWARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus*, in support of the position of Travis Paul Enmons, Jackie J. Bendo, Ed Wayne Barton and Milton Ray Woodward, is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of 115 national and international labor unions having a total membership of approximately 13,500,000 working men and women, with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

ARGUMENT

The Government's thesis on this appeal is that it is "extortion" within the meaning of the Hobbs Act, 18 U.S.C. § 1951, for members of a labor union to engage in "violence" in pursuit of a legitimate labor objective, namely, to secure 'higher wages and other union contract demands."

Gov. Br. p. 2. This is the opposite of the Government's description of the crime of extortion in its brief to this Court in *United States* v. *Local 807*, 315 U.S. 521, where it stated:

> "* * * violence used as a means of obtaining a lawful labor union objective is not extortion but simply a breach of the peace or other kindred unlawful act."[1]

Moreover, the Government's position on this appeal is in flat contradiction to its original advice to President Truman when the Hobbs Act was before him for his signature,[2] and to its almost unvarying practice in administering the Hobbs Act since 1946.[3] Finally, the "expansive interpreta-

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[1] Brief for the United States, Nos. 131-132, O.T., 1941, p. 46.

[2] President Truman stated in his message accompanying his approval:

> "The Attorney General advises me that the present bill does not interfere with the rights of unions in carrying out their *legitimate objectives*. He bases this conclusion upon the language of the bill as a separate measure and upon the legislative history." H. Doc. No. 690, 79th Cong. 2d Sess. (Emphasis supplied.)

[3] Before the indictments were returned here and in *United States* v. *Caldes*, 457 F.2d 74 (C.A. 9) there was, according to our information, only a single prosecution under the Hobbs Act in a genuine collective bargaining dispute. That case was brought in 1962, after 15 years in which the sole use of the Hobbs Act had been numerous indictments of unscrupulous officials for attempting to secure payoffs. Yet, since the Hobbs Act became law there have been countless labor disputes in which there was some violence to persons and property; in some cases the violence was serious and the strike notorious. These events could hardly have escaped the attention of the United States Attorneys in the areas in which the strikes occurred or of the Justice Department; many of them became matter of public notice additionally because they resulted in litigation either before the courts or the National Labor Relations Board.

tion of extortion used in the Hobbs Act as urged by the Government * * *,"[4] which wrests that statute out of its context as an anti-racketeering measure,[5] is without precedential support either in decisions under the Hobbs Act, or, since the States have never attempted to utilize extortion laws to enforce their policies against violence in labor dis-

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Inded in *Abbate* v. *United States*, 359 U.S. 187, where the acts committed were remarkably similar to those alleged in the present indictment (*id.* at 189), the Government charged a conspiracy to violate 18 U.S.C. § 1362, which carried a penalty of five years; no count was included under the Hobbs Act, which bears a penalty of twenty years.

In light of this history of prosecutorial quiescence, it is not necessary to invoke principles of desuetude to reject the novel theory of the present prosecution. It is sufficient to recognize that the original understanding of those charged with the administration of the Hobbs Act accords with our views, not those presently espoused by the Government. *United States* v. *Laub*, 385 U.S. 475, 485. Cf. *Norwegian Nitrogen Products* v. *United States*, 288 U.S. 294.

[4] *Caldes* 457 F.2d at 75.

[5] The vast majority of Hobbs Act prosecutions involving labor are directed against union officials who threaten economic action ("force") or violence against an employer in an effort to obtain a payoff for themselves. See e.g., *Stirone* v. *United States*, 361 U.S. 212; *United States* v. *Kramer*, 355 F.2d 891 (C.A. 7); *United States* v. *Varlack*, 225 F.2d 665 (C.A. 2), *Callanan* v. *United States*, 223 F.2d 171 (C.A. 8). The Government's power to pursue this class of cases, and their non-labor counterparts, e.g., *United States* v. *Hyde*, 448 F.2d 815 (C.A. 5), which constitute the core offense delineated by the Hobbs Act, would be in no way affected by affirmance of the decision below. Yet the Government nowhere even mentions their existence, and asserts that the decision below, which is consistent with everything that has gone before, "curtails the reach of the Hobbs Act by limiting its ban on extortionate conduct directed against employers to stiuations where wages are sought for superfluous and unwanted services." Gov. Br. p. 7.

putes, in any state court interpretation of "similar prohibitions elsewhere in the criminal law "(Gov. Br. p. 11).

1(a) This Court has twice recognized that the Hobbs Act was adopted to overrule the limiting construction which this Court, in the *Local 807* case, had placed on the Federal Anti-Racketeering Act of 1934.[6] See *United States* v. *Green*, 350 U.S. 415, 418-419; *Callanan* v. *United States*, 364 U.S. 587, 590-591. The Government agrees that "the elimination in 1946 of [§ 2] of the earlier statute was a direct response to the Court's decision in *Local 807*" (Gov. Br. pp. 8-9). It is therefore of primary importance in determining the scope of that "response" to ascertain precisely what was decided in *Local 807*. Yet the Government gives two, mutually inconsistent interpretations of that case:

In laying the foundation for its argument from the Hobbs Act's legislative history the Government says

> "This exclusionary clause [§ 2 of the 1934 Act] was held in *Local 807* to protect from federal prosecution union members who engaged in threats or acts of violence to coerce employers to meet union wage demands" Gov. Br. pp. 13-14.

But at an earlier point in its brief, the Government had described this holding more accurately

> "In *Local 807*, the Court held that members of a city truck drivers' union, who had sought by threat of violence to procure wages from their employers *for superfluous service*, were explicitly exempted from coverage under Section 2 of the 1934 Act by the lan-

[6] 48 Stat. 979.

guage quoted above." Gov. Br. p. 8, n. 5, emphasis added.

It is only the latter reading which conforms to this Court's understanding of *Local 807* as expressed in *United States* v. *Green*, 350 U.S. at 419 (emphasis added):

> "We held in Local 807 that this exception covered members of a city truck drivers' union offering *superfluous services* to drive arriving trucks to their city destination with intent, if the truck owners refused their offer, to exact the wages by violence.

In *Green* itself the indictment had charged defendants with "extortions" which

> "consisted of attempts to obtain from the particular employer
>
> > 'his money, in the form of wages to be paid for *imposed, unwanted, superfluous and fictitious* services of laborers commonly known as swampers * * * the attempted obtaining of said property from said [employer] as aforesaid being then intended to be accomplished and accomplished with the consent of said [employer], induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said [employer] * * *.'" *Id.* at 417, emphasis added.

Since these charges paralleled the circumstances in the *Local 807* case this Court necessarily held that the indictment charged an offense under the Hobbs Act. The Government's position in the instant case, however, is that the underscored portion of the *Green* indictment was mere surplusage and that violence to obtain money in the form of wages violates the Hobbs Act even if the services to be

performed in return are "genuine and desired." Gov. Br. p. 5.

The court below, unlike the District Court in *Green*, appreciated that "if the wages sought by violent acts are wages to be paid for unneeded or unwanted services, or for no services at all, * * * that such could constitute the extortion prohibited by the Act." JS 8a. But the lower court contrasted that situation with "the type of activity involved here" (JS 8a), which involves violence in support of a demand for wages for "genuine and desired services" (Gov. Br. p. 5).

Since the question on this appeal is whether that distinction is proper, any argument based on the *Local 807* case which disregards the critical circumstance that the defendants in that case had engaged in violence to obtain payment for "superfluous services" can only by misleading. Indeed, once it is understood that the *Local 807* case involved violence in support of a demand for wages to be paid for "superfluous services" there can be no doubt that achievement of the acknowledged purpose of the Hobbs Act—to outlaw the conduct which *Local 807* had sanctioned—does not encompass the prohibition of violence to obtain wages in return for "genuine and desired services."

The narrow ambit of the 1946 amendment is manifest from the very statement of Congressman Hobbs on which the Government relies, and which we agree "aptly reflect the general mood of the legislators" (Gov. Br. p. 14). Congressman Hobbs there explained:

> "This bill is drawn in response to the challenge of the following quotation from the majority opinion [in *Local 807*]:

> 'This does not mean that *such activities* are beyond the reach of Federal legislative control. Nor does it mean that they need go unpunished.'" Gov. Br. p. 14.[7]

The context of the passage Rep. Hobbs quoted from *Local 807* (315 U.S. at 536) leaves no doubt as to what the majority opinion meant by "such activities." In the immediately preceding paragraph of its opinion (*id.* at 535-536) the Court described the union "activities" to which "such" refers—"demands [for] the payment of money regardless of the management's willingness to accept [the] labor."

The colloquy between Mr. Michener and two of his colleagues from which the Government quotes, likewise demonstrates that the Act was not intended "to have [the] broad coverage" the Government now claims (Gov. Br. p. 15), but only to reverse the particular result of the *Local 807* case and to embody Justice Stone's dissent in that case into law. For the asterisks in the Government's brief are its substitute for the following statement by Mr. Michener:

> "Mr. Speaker, I cannot understand how any union man can claim that the conduct described by Mr. Justice Stone is a legitimate union activity. I have confidence that most of the rank and file of labor and my congressional district will so claim."

The "conduct described by Mr. Justice Stone," was that:

> "[The defendants], or some of them, lay in wait for

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[7] Rep. Whittington in the course of the remarks from which the Government quotes at p. 16 of its brief echoed this observation:

> "The Court in that case decided that the statute was not applicable to members of labor unions and the Court really invited Congress to clarify the statute." 91 Cong. Rec. 11913.

> trucks passing from New Jersey to New York, forced their way onto the trucks, and by beating or threats of beating the drivers procured payments to themselves from the drivers or their employers of a sum of money for each truck, $9.42 for a large truck and $8.41 for a small one, said to be the equivalent of the union wage scale for a day's work. In some instances they assisted or offered to assist in unloading the truck and in others they disappeared as soon as the money was paid without rendering or offering to render any service." *Local 807*, 315 U.S. at 539.

And Mr. Justice Stone himself was careful to distinguish between such conduct, which he believed was forbidden by the Federal Anti-Racketeering Act, and union violence directed at legitimate labor objectives:

> "*Even though the procuring of jobs by violence is not within the Act,* and though this includes the 'stand-by' job where no actual service is rendered, the granted immunity, unless its words be disregarded, does not extend to the case where the immediate objective is to force the payment of money regardless of the victim's willingness to accept and treat the extortioner as an employee." *Id.* at 541, emphasis supplied.[8]

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[8] As the Government said in its brief in *United States* v. *Green*, "This opinion is highly pertinent in interpreting the Hobbs Act because its reasoning was adopted by the congressional committee which drafted the amending legislation." Brief for the United States, No. 54, Oct. Term 1955, p. 18, n. 5. For this reason the House Judiciary Committee Report discussing Title I of the bill—which became 18 U.S.C. § 1951—is devoted almost entirely to a reproduction of the majority and minority opinions in the *Local 807* case. H. Rep. No. 238, 79 Cong., 1st Sess., pp. 2-9. See also 91 Cong. Rec. 11907 (remarks of Rep. Fellows), quoting Justice Stone's dissent, and cited at Gov. Br. p. 15, n. 8.

The distinction between the demand for unwanted services as in the *Local 807* case and a demand for *bona fide* wages for work which the employer desires was also drawn by Congressman Hancock. He first said:

> "This bill has been labeled an antilabor bill. That is not true. It is not antilabor in purpose or in fact. This bill is designed simply to prevent both union members and nonunion people from making use of robbery and extortion *under the guise of obtaining wages* in the obstruction of interstate commerce. That is all it does." 91 Cong. Rec. 11900, emphasis added.

Then, after yielding briefly to a colleague, he added:

> "In effect the Supreme Court held that it was the intent of Congress and the meaning of that act that members of Teamsters' Union 807 in New York City were exempt from the provisions of that law when attempting by the use of force or the threat of violence to obtain wages for a job *whether they rendered any service or not.* In my judgment that is a gross misinterpretation of the law and a distortion of the intent of Congress. Of course, it was never the intent of Congress to legitimize crime; nevertheless, the decision of the Supreme Court in the teamsters' case will be the supreme law of the land until the Supreme Court reverses itself, which is not likely, because five of the members of the Court who made that astounding decision are still members of the Court, or until Congress acts to correct and supersede the decision and adopts a new law written in clear and unmistakable language. *That is all this bill does.* We think a mistake was made by the Supreme Court, we are attempting to correct it through enacting a new law which will accurately and definitely reflect the attitude of the Congress, the general public and the honest, law-abiding members of

labor unions." 91 Cong. Rec. 11900 emphasis added.

As just shown, the proponents of the bill repeatedly insisted it was merely intended to cure a "technical defect"[9] in the Anti-Racketeering Act and directed attention to the particular circumstances of the *Local 807* case.[10] The Government nevertheless chooses to characterize their product as a "sweeping response to *Local 807*" (Gov. Br. p. 16). And propelled by this self-generated momentum the Government hastens to the conclusion that its own "sweeping" construction of the Act is implicit in the failures of opponents to amend the bill (Gov. Br. pp. 16-18). This argument lacks merit for several reasons:

First, it overlooks the cardinal rule of construction that the "fears and doubts of the opposition are no authoritative guide to the construction of legislation."[11] "An unsuccess-

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[9] Cong. Rec. 11913 (remarks of Rep. Whittington).

[10] This is the theme sounded by the Congressmen cited at Gov. Br. p. 15, n. 8. Rep. Hoffman, after describing at length the facts of the *Local 807 case,* discussed also a peaceful jurisdictional dispute involving a Teamster Local in Michigan whose conduct he characterized as "extortion." Since such a dispute cannot possibly fit within the bill's definition of "extortion" (and is additionally a peaceful "labor dispute" exempted by what became § 1951(c)), Rep. Hoffman's views of what constitutes "extortion" cannot be attributed to the sponsors of the bill. The sole exception is Rep. Baldwin of Maryland who spoke strongly against labor violence. But he took pains to observe that the violent Baltimore taxicab strike which was his example of that evil "does not pertain to this bill." 91 Cong. Rec. 11918.

[11] *Schwegmann Bros.* v. *Calvert Distillers Corp.,* 341 U.S. 384, 394. Rather, "It is the sponsors that we look to when the meaning of the statutory words is in doubt." *Id* at 395.

ful minority cannot put words into the mouths of the majority and thus, indirectly, amend the bill." [12]

Second, it is not sufficient for the purposes of the Government's argument to put Rep. Marcantonio's words "into the mouths of the majority"; it is necessary to attribute to them a meaning which they do not fairly bear. To be sure, he admonished that the bill would "leave the field now wide open for the prosecution of labor for any activity * * *" (Gov. Br. pp. 16-17). This prophecy has considerable historic interest due to its vindication over 20 years later by the prosecutions in this case and in *United States* v. *Caldes;* but it cannot serve to legitimatize those prosecutions. For though he was not given to understatement, even Mr. Marcantonio did not assent that the bill could *properly* be construed to encompass violence in support of legitimate collective bargaining demands.

Third, since amendments to the bill were opposed because their language was " 'substantially the same as [the exception in the 1934 Act] * * *' " (Gov. Br. p. 17), the only inference which can be fairly drawn from their defeat is that the proponents feared that their approval would have frustrated the narrow objective of overruling the *Local 807* case. That inference is confirmed beyond dispute by the remarks of Rep. Gwynne, quoted at Gov. Br. p. 18, " 'it [the LaFollette amendment] would constitute an open invitation to the Supreme Court to decide that case the same, if it should come before them again * * *.' "

Finally, the Government fundamentally misstates the nature of the Hobbs amendment to the Federal Anti-

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[12] *Mastro Plastics Corp.* v. *Labor Board,* 350 U.S. 270, 288.

Racketeering Act when it suggests that in 1946 "Congress simply delet[ed] the exception contained in the 1934 Act" (Gov. Br. p. 16), and states that the "only concession to the opponents of the statute was the insertion of Section (c)" (Gov. Br. at p. 18). Rather, the original bill was fundamentally changed by adding a specific definition of "extortion."[13] It is for this reason that as the Third Circuit correctly observed: " 'The exemption of certain labor union activities from the coverage of the act can be found in two places." *United States* v. *Sweeney*, 262 F.2d 272, 276, n. 4. As the *Sweeney* court explained, the "two places" are §1951(b)(2) which defines "extortion", and § 1951(c) which excepts activities protected by certain federal labor laws.[14]

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[13] As Rep. Hobbs explained

"The reason we left out section 6 of the Copeland Act is the same reason we left out every word of the Copeland Act. We wiped the whole thing out and substituted a bill that cannot be misunderstood * * * [that] will do the job it is meant to do, which is to prevent interference with interstate commerce by robbery or extortion. That is all we are shooting at. Those words have been construed a thousand times by the courts. Everybody knows what they mean. Therefore, we decline to become involved in a mass of language which the Supreme Court in the Local 807 case held was not sufficient to support a conviction." 91 Cong. Rec. 11912.

[14] We do not rely on subsection (c) of § 1951 in this case; nor do we understand the appellees to do so. Thus, the discussion in *Green* opinion (350 U.S. at 420) quoted at Gov. Br. p. 18-19 is of no relevance here, the Government having properly acknowledged that that discussion deals solely with the § 1951 (c) exception. Moreover, no argument is made herein, as was made in *Green*, "that the Hobbs Act applies solely to extortion that benefits the extortioner" (Gov. Br. p. 10). These references to points which were decided in *Green*, but are not involved here, are a transparent attempt to give foundation to the Government's claim that the decision below is

What was said in the debates allows no doubt that "the evil which Congress sought to correct and prevent"[15] in 1946 was the violent demand for wages in return for which only superfluous services were offered. But at least as important in determining the Congressional will when it enacted the Hobbs Act is "what Congress did not say."[16] During the entire course of the debates no one asserted that violence in the course of *bona fide* collective bargaining negotiations was intended to be covered. Congress must have known "that some disorder is unfortunately quite usual in any extensive or long drawn out strike";[17] and that threats or violence in the context of a legitimate labor dispute were much more frequent than the incidents of racketeering by faithless union officials which are the staple of Hobbs Act prosecutions. If the Committee had intended

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contrary to the "essential thrust" of *Green* (Gov. Br. p. 6). That the *Green* decision provides no authority for the Government's present theory is manifest. As the Ninth Circuit said in *Caldes:*

> "*Green* differs from the case at bar in that it dealt with extortion from an employer in the form of wages to be paid employees for imposed, unwanted and superfluous or fictitious services." 457 F.2d at 78.

Contrary to the contention developed at Gov. Br. pp. 11-12 this distinction of *Green* is entirely sound. This Court's rejection in *Green* of the District Court's reliance on the *ANPA* and *Gamble* cases indicates that the Hobbs Act reaches some labor objectives unregulated by the National Labor Relations Act. It does not follow that the legitimacy of the object pursued is irrelevant under the Hobbs Act.

[15] *United States* v. *Champlin Refining Co.*, 340 U.S. 290, 297.

[16] *Rewis* v. *United States*, 401 U.S. 808, 811-812.

[17] *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F.2d 472, 479 (C.A. 3) cert. denied on this issue, 310 U.S. 655, modified on another issue, 311 U.S. 7.

to hit this wide and familiar target, surely its report would have so indicated, or one of the sponsors would have so stated in the debates, giving as an example of the need for the bill some recent and notorious violent strike.[18] To contend that Congress intended to subject union members who committed threats or violence during an ordinary strike for wages to the extremely severe penalties prescribed in the Act, while avowing that it was only clarifying an anti-racketeering law, is a tacit slander of the legislative process.

(b) As a matter of convenience we began our argument by considering the legislative history of the Hobbs Act. For one of the few areas of common ground between the parties is that this history establishes that the Hobbs Act was passed as a response to this Court's construction of § 2 of the Federal Anti-Racketeering Act of 1934 in the *Local 807* case. But we might just as easily have begun with an examination of the language of the Act, for that language, properly read, sustains our view that the Hobbs Act does not reach all violence, but only violence to achieve an illegal purpose.

"Extortion" is defined in the Hobbs Act to mean "the obtaining of property from another with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of law" (18 U.S.C. § 1951(b)(2)). The Government proclaims that this "language is free from ambiguity and without qualification." Gov. Br. p. 8. That claim is essential to the Government's case since this is a criminal statute and this Court has

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[18] "The silence of the sponsors is pregnant with meaning," *Labor Board* v. *Fruit Packers*, 377 U.S. 58, 66.

repeatedly held that " 'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.' " *Rewis* v. *United States*, 401 U.S. at 812, quoted with approval in *United States* v. *Bass*, 404 U.S. 336, 347; see also the cases cited in *Bass*, *id.* at 347 and *United States* v. *Campos-Serrano*, 404 U.S. 293, 297. But the contention that the definition of extortion is unambiguous and unqualified is wholly unwarranted.

The word "wrongful" is clearly one of qualification or limitation; moreover, it can not be ascertained by mere inspection whether that term modifies only the phrase "use of actual or threatened force" or whether it also modifies "violence" and the other means described in § 1951(b)(2). And if "violence" were not otherwise qualified the Government's position in this case would at least be linguistically tenable. On the other hand, if "wrongful" modifies "violence" it follows that the Act was not intended to reach violence to accomplish a legitimate objective. Violence by private persons is almost always unlawful, and therefore "wrongful," if that term is used in its broadest sense. Thus, "wrongful" in the phrase "wrongful violence" serves a function only if it is a term of limitation which characterizes the object being pursued by a violent means.

If the matter were otherwise in doubt, the general rule for resolving such ambiguities in criminal statutes would lead to the view that "wrongful" modifies, and thus qualifies, both "force" and "violence." But there need be no doubt. For Rep. Hobbs explained that "wrongful" was indeed intended to modify the entire phrase: During the debates, Rep. Voorhis put the following question to Rep. Hobbs: "In subsection [b], page 2, there is the

word 'wrongful.' Does that word 'wrongful' apply to the entire s ection?" Representative Hobbs replied, "Yes; it qualifies the whole section." 91 Cong. Rec. 11908. Thus when the language of the statute is read in the light of its sponsors' explication it is clear that an illegitimate object is a necessary element of the offense created by the Hobbs Act. And this is how the Government understood the Act when it framed the indictment in *Green* to charge extortion of the employer's

> " 'money, in the form of wages to be paid for *imposed, unwanted, superfluous and fictitious* services of laborers commonly known on swampers * * * the attempted obtaining of said property from said [employer] as aforesaid being then intended to be accomplished with the consent of said [employer], induced and obtained by the *wrongful use, to wit, the use for the purposes aforesaid,* of actual and threatened force, violence and fear made to said [employer] * * *.'" 350 U.S. at 417, emphasis added.

2. The foregoing demonstrates, both from the language and the legislative background of the Hobbs Act, that Congress determined that a necessary element of the crime of "extortion" as there defined, is that the ultimate purpose pursued by the defendant must be illegitimate. The Act was not intended as a catchall covering any and all violent activity which takes place during an otherwise lawful strike. That demonstration is sufficient to require affirmance of the District Court, for in construing statutes the judiciary's task is to "reconstitute the gamut of values current at the time when the words were uttered." *Woodwork Manufacturers* v. *NLRB,* 386 U.S. 612, 620 quoting Judge Learned Hand. What matters in this case is what Congress meant by

extortion, not what the common understanding of that crime may be But we now show that the Government's assertion (Gov. Br. p. 12) that "the proscription * * * on extortionate conduct applies not merely to the wrongful use of force and threats in seeking illegitimate ends, but also has equal application to actual and threatened force for the purpose of attaining legitimae ends" is unsound generally, as well as in the specific context presented here. The requirement in the Hobbs Act that illegitimate means and ends must conjoin to prove extortion is in the mainstream of the law of extortion.

Extortion deals with the misuse of force to gain an illegitimate end. It does not interdict the use of more than allowable force where the end result is legitimate. Such excessive force is, of course, covered by the criminal law, but not by the crime of extortion. As Judge Wisdom stated in *United States* v. *Hyde*, 448 F.2d 815, 833 (C.A. 5):

> "It is the wrongful use of an otherwise valid power that converts dutiful action into extortion. If the purpose and effect are to intimidate others, forcing them to pay, the action constitutes extortion. Put another way, it is the right to impartial determination of the issue on the merits (*i.e.*, whether to enforce the law or whether to picket or strike) that the victim is deprived of when these actions are taken for the purpose of coercing him into paying."

In other words, the prohibition against extortion is intended to insure that public officials and union officers make their decisions in terms of the responsibilities of their position rather than to further an improper pecuniary interest. Let us put this formulation in concrete terms: The police are authorized to utilize reasonable force to recover stolen

property. If they use excessive force to secure that property they have breached the law, but not the law of extortion. If, on the other hand, they use their "otherwise valid power" to secure a payoff there is a "wrongful use" which subjects them to prosecution for extortion.

So here. Labor unions are authorized to utilize reasonable force (*i.e.*, the methods of economic coercion encompassed by §§ 7 and 13 of the National Labor Relations Act) to secure improved wages, hours, terms and conditions of employment. If they utilize violence to secure those ends they are subject to sanctions under state civil and criminal laws and they commit an unfair labor practice under federal law. But they have not committed extortion, whether under state law or under the Hobbs Act. If on the other hand, they utilize their "otherwise valid power" to achieve illegitimate ends, payment for unwanted and superfluous services or a direct payment to a faithless union official, then both state and federal prohibitions against extortion are violated.[19]

As the Ninth Circuit correctly observed in *United States* v. *Caldes*, 457 F.2d 74, 77-78:

"The use of the term 'extortion' in the Hobbs Act is

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[19] The distinction was well drawn by Judge Van Oosterhout in *Callanan* v. *United States*, 223 F.2d at 173.

"The anti-racketeering statute under which the charges are based has no reference or bearing on action by a labor organization leader, honestly acting and representing members of his organization. It has reference to and bears on interference with interstate commerce by the compulsory payment of money extorted by a labor leader for his own individual enrichment. The act clearly is protective to labor organizations, and labor members, and their membership, as it is to employers."

based on the definition given the term 'extortion' in the New York Penal Code. There the word is defined as '. . . the obtaining of property from another . . . induced by wrongful use of force or fear. . . .' This statute was interpreted in People v. Dioguardi, 8 N.Y.2d 260, 203 N.Y.S.2d 870, 168 N.E.2d 683 (1960). The Court of Appeals construed the term 'force' as used to define extortion, as including coercion, physical violence, destruction of property and economic loss other than that induced by a lawful strike. In *Dioguardi*, the defendant received payments from the victim company which were, in effect, to buy an end to peaceful organizational picketing. The Court stated:

> 'The picketing here . . . may have been perfectly lawful in its inception (assuming it was part of a *bona fide* organizational effort) and may have remained so—despite its potentially ruinous effect on the employer's businesses—so long as it was employed to accomplish the legitimate labor objectives of organization. Its entire character changed from legality to criminality, however, when it was used as a pressure device to exact the payment of money as a condition of its cessation.'

"Thus the New York Court held that the payment out of fear of economic loss became extortion when the aim and objective of the strike was not merely to secure more favorable terms for the laborer but to exact money as a condition of further economic survival. This principle was followed in United States v. Kramer, 355 F.2d 891 (7th Cir. 1966) where a union leader threatened the employer with labor trouble if he was not paid a sum of money, and in United States v. Hyde, 448 F.2d 815 (5th Cir. 1971) where the state attorney general and his aide were convicted of a Hobbs Act violation for threatening life insurance and loan com-

> panies with state action which could lead to the closing of their businesses unless payments were made to the defendant. The Court there held that the 'wrongful use of an official right may be a basis for extortion.'"

Thus, in each of the extortion cases cited by us, and by the Government,[20] the finding of extortion rests on the conclusion that some degree of coercion was utilized for an unlawful purpose. We have found, and the Government has cited, no case which holds, as the Government urges here, that conduct, which would have been lawful if the defendant had sought to achieve his objective by a sanctioned means of coercion, constitutes "extortion" because excessive force was used. Nor have we found, or has the Government cited, any state case in which violence in support of legitimate labor demands has been prosecuted as "extortion."

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[20] The federal cases cited at Gov. Br. pp. 12-13 are wholly remote from this one. First, and most important, none arose in a context in which some use of force would have been lawful; thus, those cases are of no relevance at all in determining whether the use of an excessive degree of force, in a context where some force is allowable is sufficient to constitute extortion. The only authority on that critical point is *Hyde* and it supports our view. While the Government asserts it would have been proper in *Battaglia* (383 F.2d 303) for the defendants to have enforced their demand to use the victim's business establishment as a location for their pool table if it were "enforced by legitimate business pressures" it does not identify the nature of such pressures. None come to mind. Moreover, there is not the slightest suggestion in the opinion that the conviction turned on the nature of the pressures utilized. Again, in *Tropiano* (418 F.2d 1069) the Second Circuit did not distinguish between "the wrongful use of threats to obtain the right to solicit business" and the *rightful* use of threats. *Tropiano* does not even discuss the proper definition of the crime of extortion. Nor does *Glasser* (443 F.2d 994) aid the Government. It is

CONCLUSION

For the foregoing reasons, the decision of the court below should be affirmed.

Respectfully submitted,

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indistinguishable in principle from *Local 807* and *Green* since the use of union glaziers to install glass was an unwanted service just as the swampers were "superfluous" in *Green* and the union truck drivers were not needed in *Local 807*. In sum all three of these cases involve the plain common rackets that were at the forefront of Congress's attention both in the original Federal Anti-Racketeering Act and in the Hobbs Act.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, *Appellant*

v.

TRAVIS PAUL ENMONS, ET AL.,

On Appeal from the United States District Court for the Eastern District of Louisiana

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BRIEF OF AMICUS CURIAE, THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION

PRELIMINARY STATEMENT

Pursuant to this Court's order entered on October 24, 1972, the American Newspaper Publishers Association was granted leave to file a brief amicus curiae in this action. In this brief, the ANPA respectfully urges that the judgment of the District Court entered on January 6, 1972, in accordance with that Court's December 16, 1971 opinion reported at 335 F. Supp. 641, be reversed.

INTEREST OF THE AMICUS CURIAE

The American Newspaper Publishers Association (hereinafter "ANPA" or Association") is a non-profit, membership corporation organized and existing under the laws of the State of New York. Its membership consists of more than 1,000 daily newspapers, representing over ninety percent of the total daily and Sunday circulation of newspapers in the United States.

The Association concerns itself with matters of general significance to the daily newspaper publishing business and to the profession of journalism. In that regard, the ANPA acts as a clearing house of information for its members by disseminating bulletins and research reports on all significant phases of the daily newspaper business. Frequently, it has taken positions on public matters which affect the interests of its members. In the case at bar, the Association desires to present its views on the question of the applicability of the Hobbs Act, 18 U.S.C. § 1951 to situations where wages are sought for superfluous and unwanted labor. In short, the Association agreed with the government's position in this case. If the District Court decision is left undisturbed, the ban of the Hobbs Act will be severely curtailed, a result, we submit, which is wholly inconsistent with this Court's decision in the *United States* v. *Green*, 350 U.S. 415 (1956).

Violence against employers and employees during the collective bargaining process must be stopped. The attainment of this objective should not and does not depend on the type of business against which the violence and threats of violence are directed. Accordingly, we make no special plea on behalf of the newspaper business. Instead, this Association would hope that the infection of violence, intimidation, and threats would

be eradicated from the entire field of labor management relations. Unfortunately, this virus cannot be remedied, we submit, without the intervention of the full power and prestige of the federal government. Application of the Hobbs Act to extortionate union demands as it was originally intended by Congress and as the government urges in this case may provide a therapeutic barrier to prevent future violent incidents in the contest of the collective bargaining process.

While we make no special plea on behalf of the newspaper publishing business, we would suggest that violence directed at newspapers during labor strikes illustrates one reason the Congress enacted the Hobbs Act. While a few newspapers have attempted to operate during union-called strikes and have, as a result, been subjected to vicious and cowardly acts of violence, the vast majority have decided to cease operations during strikes based on the experience of others in similar circumstances. In most strike situations, newspapers could continue to operate but for acts or threats of violence. Call it intimidation or prudent judgment, the fact remains that in most cases newspapers cease operation during labor strikes. Being coerced into ceasing their operations, newspapers are unable to fulfill their responsibility of informing the public; and, ultimately it is the public which must also suffer from such information blackouts.

Several illustrations of force and violence directed at certain members of this Association illustrate the degree to which labor strife has plagued the newspaper publishing business. For example, December 15, 1967, the *Los Angeles* (California) *Herald Examiner* was struck. In these few sentences, it is difficult to portray the extent of human sorrow and property damage suf-

fered by those who continued to publish this newspaper. During the short period from the beginning of the strike on December 15, 1967 until the end of February, 1968, the newspaper and even its advertisers were subjected to unrelenting violence when accords were not reached. These incidents ranged from the usual picket line threats and altercations to fire-bombing the homes of non-striking employees and murder.[1]

The strike of the *San Rafael* (California) *Independent Journal* is another tragic commentary on newspaper-labor relations. The International Typographical (ITU) struck on January 7, 1970, and during the course of one month, the newspaper was subjected to numerous union riots on its doorsteps, culminating in hand-to-hand combat with the police.[2] The newspaper's advertisers and other people who transacted business with it were intimidated by violence and threats of violence. Numerous advertiser's windows were smashed, and as in the *Los Angeles Herald-Examiner* strike, employees' homes were vandalized and bombed. In fact, the production manager was murdered in his house on the night of July 4, 1970 and a union member was found guilty and sentenced to life imprisonment.[3]

The International Mailers Union struck the *Charleston* (W.Va.) *Gazette* on November 19, 1971. Since that time, over 131 recorded acts of violence have been per-

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[1] See Los Angeles Herald Examiner, February 23, 1968, at pp. 1-2, Cols. 1.

[2] See San Rafael Independent Journal, February 15, 1970, p. 1, cols. 1, 3, and 8.

[3] See San Rafael Independent Journal, December 9, 1970, p. 1, col 8.

petrated against the newspaper, its employees and truck drivers. The vandalism has even extended to automobiles owned by the parents of delivery boys who continued to deliver the newspaper during the strike. But mere vandalism and assaults are not the only violence involved. Drivers in delivery trucks and non-striking employees in their private automobiles have been ambushed by shotgun fire. Bricks thrown by individuals in automobiles have smashed into the windshields of newspaper delivery trucks while on delivery rounds. Truck drivers have been wounded by shotgun fire while making newspaper deliveries.[4]

From this brief recitation of some members' experiences with violence associated with labor strife, it is apparent that the ANPA is concerned with the vital subject of this appeal. It is hoped that this brief will be of assistance to the Court in resolving the issue of this appeal.

ARGUMENT

At the outset, it is emphasized that the Association fully supports and adopts the arguments and points contained in the Brief for the United States. The only issue involved in this appeal is whether the Hobbs Act (18 U.S.C. § 1951) is limited to only those situations where union violence is directed at obtaining wages for unwanted or superfluous services. It is submitted that

[4] See e.g., Charleston (W.Va.) Gazette, issues of 3/27/72, 3/22/72, 3/21/72, 1/21/72, 1/22/72, 1/23/72, 1/24/72 (12A). Similarly, violence was visited on the *El Mundo* newspaper published in Puerto Rico during a strike. As a result of the violence, the newspaper on June 23, 1972 was forced to close down. The situation deteriorated to the point where employees were forced to enter and exit by helicopter to escape the brutality of the picket lines. See N.L.R.B. Hearing Examiner's findings at case No. 24-CB-802.

such a restrictive interpretation of the Act is not justified by a reading of the statute nor by this Court's opinion in *United States* v. *Green*, 350 U.S. 415 (1956). Indeed, both a reading of the statute and the *Green* decision clearly indicate that the object of the violence is not determinative of whether the violent activity is extortionate within the meaning of the Hobbs Act.

To counter the clear language of the Act, it has been argued that punishment for strike violence is a local matter which should not be embraced by the Act. Moreover, if such violence comes within the ambit of the federal legislation, then violators would be subject to both a state and federal penalty. Of course, the short answer to this argument is that many criminal acts may constitute a violation of state and federal law. Although much strike violence is subject to state law (e.g., aggravated or simple arson, conspiracy, criminal damage to property), one must not overlook the fact that the Hobbs Act is directed to the interstate character of such extortionate violence. Two separate crimes are involved. Moreover, it is submitted that violence associated with the collective bargaining process is interstate in character and effect, and therefore, peculiarly within the province of the federal government to investigate and prosecute. In this regard, Congressman Whitington stated:

> "The bill is to prevent a repetition of the physical violences by members of labor unions on those engaged in interstate commerce.* * *
>
> * * * * * * * * * *
>
> The pending bill will provide for punishing racketeers who rob or extort. There is no justification for labor unions opposing the bill as it constitutes no invasion of the legitimate rights of labor. Rob-

bery and extortion by members of labor unions must be punished. Labor unions owe that much to the public. In demanding the protection of laws, labor unions should urge that those engaged in legitimate interstate commerce be protected from robbery and extortion. (91 Cong. Rec. 11913).

In *U.S.* v. *Green, supra,* this Court discussed the legislative history of the Hobbs Act and noted that:

> "The legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding. (350 U.S. at 419).

We submit that the dichotomy embraced by the District Court below is totally improper and unrealistic. In that decision, the District Court held that the Hobbs Act extended only to extortionate demands for wages for unwanted labor, but not to wages for desirable and necessary labor. Such reasoning, we submit, is tantamount to holding that the ends justify the means. Our society has arrived at the point where it must be firmly rooted in our jurisprudence that violence cannot be condoned or encouraged regardless of the ends to which that violence is directed. The legislative history set forth in the government's brief clearly demonstrates that Congress did not and could not have intended that the application of the Hobbs Act depends on the objects of the violence in a labor context. The Act, instead, was directed at extortionate threats and acts regardless of the reasons for those threats and acts. Any other interpretation of the Act, we suggest, would create a mind-boggling anomaly.

CONCLUSION

For the reasons stated in the government's brief, we respectfully urge that the judgment of the District Court entered on January 6, 1972, be reversed and the indictment be re-instated.

Respectfully submitted,

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OCTOBER TERM, 1972.

No. 71-1193

UNITED STATES OF AMERICA,
Appellant,

vs.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON AND MILTON WOODWARD.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

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MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

The Chamber of Commerce of the United States of America ("Chamber") hereby respectfully moves this Court for leave to file a brief *amicus curiae* herein in support of the Appellant, pursuant to the Rules of this Court.

While the consent of counsel for the Appellants has been obtained, counsel for Appellees has declined consent to the filing of such a brief.

INTEREST OF THE AMICUS CURIAE.

The Chamber of Commerce of the United States is a federation consisting of a membership of over thirty-seven hundred (3700) state and local chambers of commerce and professional and trade associations, a direct business membership in excess of thirty-eight thousand (38,000), and an underlying membership of approximately five million (5,000,000) business firms and individuals. It is the largest association of business and professional organizations in the United States.

The Chamber has appeared as *amicus curiae* in this Court in a wide range of labor relations matters which have substantially affected the legitimate and vital interests of its members. Examples of such cases in which the Chamber has recently participated include *N. L. R. B.* v. *Pittsburgh Plate Glass Co.*, ____ U. S. ____, 30 L. Ed. 2d 341 (1971); *Boy's Markets* v. *Retail Clerks Union*, 398 U. S. 235 (1970); *N. L. R. B.* v. *Burns International Security Services, Inc.*, ____ U. S. ____, 80 LRRM 2225 (1972); *H. K. Porter Co.* v. *N. L. R. B.*, 397 U. S. 99 (1970); *Sears, Roebuck and Co.* v. *Carpet Layers, Local 419*, 397 U. S. 655 (1970); and *Los Angeles Herald Examiner* v. *Kennedy*, 400 U. S. 3 (1970).

During this very Term, the Chamber has also participated as *amicus curiae* in *N. L. R. B.* v. *Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO*, No. 71-7111; *N. L. R. B.* v. *International Van Lines*, No. 71-895; *Sid Harvey, Inc. and Sid Harvey Brooklyn Corp.* v. *Local 810, et al.*, No. 72-556; *Phelps Dodge Corporation* v. *AFL-CIO Joint Negotiating Committee for Phelps-Dodge Corporation, et al.*, Nos. 72-220, 72-359; and *Terminal Freight Cooperative Association, et al.* v. *N. L. R. B.*, No. 72-501.

The participation by the Chamber in the cited matters

has been a function of the importance of the issues they presented, conceptually and practically, to the Chamber's members, constituting the broadest and most comprehensive class of employers in commerce. Moreover, this Court has recognized in *UAW* v. *Scofield*, 382 U. S. 205 (1965), that the interests of parties who are aggrieved by unlawful conduct are not identical to those of the government's agents and agencies which prosecute or seek to remedy such unlawful conduct. This Court has therefore determined that such aggrieved parties should be permitted to participate in the appellate deliberation of matters affecting their vital interests even where, as in *Scofield*, no express statutory basis existed for their doing so. One of the principles which has motivated the Chamber to seek participation in this Court in selected labor matters is that absent such participation the views of those uniquely affected by the challenged unlawful conduct would not find expression here. (*E.g., N. L. R. B.* v. *Granite State Joint Board, et al.*).

The instant case satisfies both criteria. The question presented, whether the penalties of fine and imprisonment provided under the Hobbs Act (18 U. S. C. 1951) apply to acts of violence committed by unions for the purpose of coercing employers to consent to higher wages or other contract demands, is of enormous importance to the Chamber's members since they belong to the class of persons whom the Hobbs Act was intended to protect. Such employers are currently without a genuinely effective, reliable and uniform deterrent against acts of violence committed by unions or employees in aid of collective bargaining objectives which cannot otherwise be obtained.

The obvious significance of securing the protection of such a legal deterrent, coupled with the fact that the parties to the instant proceeding include no employers for whose benefit the statute in question was enacted, impels the Chamber respectfully to submit its views to the Court.

Wherefore, the Chamber requests the Court to grant this motion for leave to file a brief *amicus curiae* in support of the Appellant.

Respectfully submitted,

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In the Supreme Court of the United States

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UNITED STATES OF AMERICA, APPELLANT

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TRAVIS PAUL EMMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

REPLY BRIEF FOR THE UNITED STATES

As set forth in our main brief, the Hobbs Act defines "extortion" to mean "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)). This language is not ambiguous. It covers any situation where a person, by "wrongful" means, induces someone to consent to surrender "property" to him. No distinction is drawn on the basis of the circumstances, or the nature of the property obtained; nor does it matter whether the property surrendered

actually belongs to the one induced to give his consent.[1]

I. THE USE OF VIOLENCE TO FORCE AN EMPLOYER ENGAGED IN INTERSTATE COMMERCE TO CONSENT TO HIGHER UNION WAGES IS EXTORTIONATE CONDUCT PROSCRIBED BY THE HOBBS ACT

A. Appellees seek to engraft onto the statutory defintion a limitation that would restrict the Act's coverage *only* to persons who, by wrongful use of force, violence or fear, induce another to give to them property *that they could not have otherwise obtained from the victim lawfully.* Thus they contend that, quite apart from the means employed, there must be a "felonious misappropriation of property" (Br. p. 16), or an *"unlawful* taking" (Br. p. 21, emphasis in original), to make out an offense of extortion under the Hobbs Act. The argument, as we understand it, apparently is that the federal statute can never reach and punish the proscribed activity if that activity is aimed at achieving an otherwise "legitimate" end, notwithstanding the use of "wrongful" means and a clear interference with interstate commerce.

There is no support for appellees' position in the plain language of the Hobbs Act. The statutory definition speaks only in terms of the "wrongful use" of

[1] Appellees advisedly do not argue that the "higher wages and other monetary benefits" referred to in the indictment (App. C, p. 14a) are excluded from the statutory term "property." While that was the position of the district court (App. A, p. 9a), this Court recognized in *United States* v. *Green*, 350 U.S. 415, that wages enjoyed no such exemption. And see our main brief at pp. 9–10.

prohibited *means*, without regard to whether the desired *end*—*i.e.*, "the obtaining of property"—is or is not itself "wrongful."[2] As we have shown in our main brief (pp. 13–19), the legislative history of the Act indicates that the broad sweep of the language was intentional. The debates on the floor of the House make it abundantly clear that the new legislation is not to "apply to labor unions alone," but is to have equal application "to any group of men that are interfering with interstate commerce, whether they be labor unions, farm organizations, or anybody else." 91 Cong. Rec. 11844 (remarks of Rep. Robsion). Just as members of organized crime, for example, violate the "extortion" provision of the Hobbs Act when they resort to wrongful use of force or violence to obtain a portion of another's interstate business[3]—a wholly legitimate end if accomplished through negotiation or competition—so, too, Congress made it a Hobbs Act violation for members of labor unions to use such tactics, as distinguished from lawful collective bargaining negotiations, to obtain a "contract * * * calling for higher wages and other monetary benefits" (App. C, p. 14a). Congressman Hobbs, the

[2] In this regard, compare the definition of "robbery" in the Act (18 U.S.C. 1951(b)(1); emphasis added):

(1) The term "robbery" means the *unlawful taking or obtaining of personal property* from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

[3] See cases discussed at pp. 12–13 of our main brief.

chief proponent of the legislation, stated (89 Cong. Rec. 3217): "This bill is grounded on the bedrock principle that * * * extortion [is] extortion, whether or not the perpetrator has a union card."

B. It is, of course, agreed that this legislation was enacted in response to the decision in *United States* v. *Local 807*, 315 U.S. 521, which involved an application of the Anti-Racketeering Act of 1934 in the context of an effort to obtain, by threat of violence, payments for superfluous and unwanted services. But, contrary to appellees' assertion, what concerned Congress most about *Local 807* was not the particular facts of that case, but rather the sweep of the majority opinion. See 315 U.S. at 535. The Court there—as indeed appellees urge be done here—looked solely to "*the objective* that these defendants sought to attain by the use of force and threats * * *" (315 U.S. at 533; emphasis added); if the objective was permissible under the exclusionary provision of Section 2(a)—*i.e.*, to obtain "the payment of wages by a bona-fide employer to a bona-fide employee"—then that was held to justify the means (315 U.S. at 537).

This is precisely the result that Congress sought to defeat by enacting the Hobbs Act. Its response to *Local 807* was not a narrow one directed only to the facts of that case. Congress did not, for example, merely redefine the term "bona fide employee" in the predecessor statute to remove from the exemption in the 1934 Act persons seeking payment for "superfluous" or "unwanted" services. Nor did Congress focus simply on the word "wages" and rewrite the statute so as to except from that term the type of

payments extracted in *Local 807*. And, as pointed out in our main brief (pp. 16–18), the legislators similarly rejected efforts to amend the questioned provision by bringing within the coverage of the Anti-Racketeering Act only payments made in response to force or violence, leaving otherwise intact the Section 2(a) exemption for "the payment of wages by a bona-fide employer to a bona-fide employee." Instead, as this Court observed in *United States* v. *Green, supra,* 350 U.S. at 419, Congress enacted the new legislation in broad terms "to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding." And the statutory definition of the term "extortion" contemplates no exemption for labor, or anyone else, on the ground that the "property" sought to be obtained by "wrongful" means could have otherwise been sought in a manner that would not have offended the statute, such as by peaceful collective bargaining.

C. Of course, the Hobbs Act does not punish union *demands* for higher wages. As appellees point out (Br. pp. 20–21, 25), Congress did not intend to go that far. But when the union "demands" are accompanied by the "wrongful use of force, violence or fear," those demands cease to be legitimate labor activity and become extortionate conduct within the meaning of the statute. Cf. *Milk Wagon Drivers Union of Chicago* v. *Meadowmoor Dairies,* 312 U.S. 287, 294. Moreover, resort to such conduct—especially the type of conduct charged in the present indictment—to obtain "higher

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wages and other monetary benefits" (App. C, p. 14a), clearly constitutes an attempted "felonious misappropriation of another's property" (Appellees' Br. p. 16). The defendants here have no *right* to the increased payments that are the subject of contract negotiations, even if their services are both wanted and needed.[4] The money they seek to obtain is, as explained in our main brief at pp. 9–10, unquestionably the "property" of their employer. To use felonious means to force his consent to pay that money to them is as much an impermissible "misappropriation" of the employer's property when the perpetrators intend to render wanted services as it is when they have no such intention. Appellees' argument to the contrary suffers the very defect that caused Chief Justice Stone to dissent in *Local 807*, and that prompted Congress to enact the Hobbs Act; it makes the defendants' "willingness to work the test of guilt, regardless of the intended and actual effect of the violence on the victims in compelling them to pay the money not as wages but in order to secure immunity from assault" (315 U.S. at 543; Stone, C.J., dissenting).

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[4] Even assuming *arguendo* that such a claim of right could be asserted—as, for example, if the money sought was part of an overdue debt which the victim owed to the defendants—the defendants could not use the same means as are involved here to obtain payment of the debt without violating the extortion provision of the Hobbs Act. Compare the Consumer Protection Act of 1970, 18 U.S.C. 891–894, which punishes as a felony the use of "extortionate means" to collect any extension of credit, including valid and just debts. Cf. *United States v. Bonnano*, C.A. 9, Nos. 72–1779 and 72–1780, decided September 14, 1972, slip op. 3–4. And see n. 8, *infra*.

II. NEW YORK CASE LAW, CONSTRUING THE STATE EXTORTION STATUTE, DOES NOT SUGGEST ANY BASIS FOR DISMISSAL OF THE INDICTMENT IN THE PRESENT CASE

The state court decisions construing the similar New York extortion statute, on which appellees place heavy reliance (Br. pp. 37–40), do not support the narrow construction of the Hobbs Act that they urge here.[5] Those cases all involved a question not presented on the dismissal of the indictment in the present case—whether the means used to obtain the property, which in those cases was alleged to be "wrongful use of *fear*," was sufficient to establish a

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[5] There is no dispute that the definition of extortion in the federal statute was "copied from the New York Code substantially." 91 Cong. Rec. 11900 (remarks of Rep. Hobbs.) N.Y. Penal Code, Sec. 850 (1909), which was then in effect, defined "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of force, violence or fear * * *."

Appellees claim that, because New York law at the time of the Hobbs Act punished as a misdemeanor the actual or threatened violence to obtain an improved union contract (N.Y. Penal Code, Sec. 530 (1909)), the federal statute could not make the same conduct a felony. While it is doubtful that this case, had it arisen in New York prior to the Hobbs Act, would have been prosecuted under Section 530 of the New York law, rather than Section 850 (compare *People* v. *Kaplan*, 240 App. Div. 72, 269 N.Y.S. 161 (N.Y. Sup. Ct.), affirmed, 264 N.Y. 675, 191 N.E. 621 (N.Y.C.A.)), appellees point is in any event not well taken. Congress can properly choose to punish as a felony conduct which the New York legislature chose to treat only as a misdemeanor. Both New York statutes were considered by Congress and the felony provision was followed. See Hearings Before Subcommittee No. 3, of the House Committee on the Judiciary, on H.R. 5218, H.R. 6752 and H.R. 6872, 77th Cong., 2d Sess., pp. 213–214, 227 (1942).

"felonious intent" (Appellees' Br. p. 38). Under the New York law, as distinguished from the Hobbs Act, it was provided that fear, to constitute extortion, may be induced by a threat to do an "unlawful injury to the person or property" (N.Y. Penal Code, Sec. 851 (1909)). The controversy in most of the New York cases cited by appellees was whether, as a factual matter, it could be said that the threats to injure property were "unlawful" in that they were made with the requisite criminal intent.* As stated in *People* v. *Sheridan,* 186 App. Div. 211, 213, 174 N.Y.S. 327, 329 (N.Y. Sup. Ct.), "[t]he unlawfulness lies in the motive." Thus, "* * * the intent of the defendant to do an unlawful injury to the complainant's property was one of the essential elements of the crime." *People* v. *Weinseimer,* 117

* *People* v. *Cuddihy*, 151 Misc. 318, 324, 271 N.Y.S. 450 (Ct. Gen. Sess.), affirmed, 243 App. Div. 694, 277 N.Y. S. 960 (N.Y. Sup. Ct.), involved a threat by an employer to fire an employee if he refused to pay back a certain portion of his wages as the employee had agreed to do by pre-employment agreement. *People* v. *Sheridan*, 186 App. Div. 211, 213, 174 N.Y.S. 327 (N.Y. Sup. Ct.), involved a threat by an elevator inspector to report an alleged defect in an elevator if he was not paid $50. *People* v. *Weinseimer*, 117 App. Div. 603, 616, 102 N.Y.S. 579, 588 (N.Y. Sup. Ct.), and *People* v. *Barondess*, 133 N.Y. 649, 31 N.E. 240 (N.Y.C.A.), both involved threats by union officials to keep their men on strike, if they were not paid a sum of money. *People* v. *Dioguardi*, 8 N.Y. 2d 260, 168 N.E. 2d 683 (N.Y.C.A.), and *People* v. *Adelstein*, 9 App. Div. 2d 907, 195 N.Y.S. 2d 27 (N.Y. Sup. Ct.), both involved threats by union officials to have the victim's place of business picketed if sums of money were not paid.

App. Div. 603, 616, 102 N.Y.S. 579, 588 (N.Y. Sup. Ct.).[7]

We, of course, do not argue in this case that the defendants' "intent" to extort property is irrelevant to a criminal prosecution under the Hobbs Act. But, as even the New York cases cited by appellees make clear, the question of intent is a factual matter to be resolved in the first instance by the jury; it cannot serve as a basis for dismissal of the indictment.

To the extent that the New York cases are at all relevant here, we believe that they essentially support our position. Each concerned the question whether the *means* employed—in those cases, "fear" by threats of injury to property—were "wrongful" because the intended result was to coerce another to consent to surrender his property. That, we submit, is the proper inquiry under the Hobbs Act, and an affirmative response by the jury to that question would, if supported by the evidence, establish "extortion" within the meaning of the federal statute just as it

[7] Appellees' reliance on *People* v. *Gassman*, 182 Misc. 878, 45 N.Y.S. 2d 709 (Ct. Gen. Sess.), affirmed, 268 App. Div. 377, 51 N.Y.S. 2d 173 (N.Y. Sup. Ct.), affirmed, 295 N.Y. 254, 66 N.E. 2d 705 (N.Y.C.A.), is wholly misplaced. That case involved a prosecution for restraint of trade under the Donnally Act, N.Y. Bus. Law Sec. 340, which specifically excepts *bona fide* labor unions from prosecutions (in that case, independent laundry drivers, who were associated in dealing with the laundries under a closed-shop agreement). The essential question was whether or not the association was actually a union so as to be exempted.

would under similar state statutes.* As the California Supreme Court stated in *People* v. *Beggs,* 178 Cal. 79, 84, 172 Pac. 152, 154, in discussing the California extortion statute, Cal. Penal Code, Sec. 518, which is in all relevant respects identical to the Hobbs Act:

> [I]t is the means employed which the law denounces, and though the purpose may be to collect a just indebtedness * * * it is nevertheless within the statutory inhibition. * * * Hence * * * the fact that the end accomplished by such means is rightful, cannot avail one as a defense in such prosecution, any more than such facts would constitute a defense where one compels payment of a just debt by the threat to do an unlawful injury to the person of his debtor.

Congress intended that the Hobbs Act be read in the same way. As clearly revealed in a colloquy between Congressman Robsion and Congressman Springer, "the definition of robbery and extortion put in this bill [the Hobbs Act] is that followed by the codes and statutes generally throughout the Nation, in all the jurisdictions of the various States" (91 Cong. Rec. 11910).

Appellees suggest that this focus on the *means* employed, rather than on the objective, renders the federal

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* See, *e.g.*, *In re Sherin*, 27 S.D. 232, 130 N.W. 761 (S.D. Sup. Ct.); *State* v. *Phillips*, 62 Idaho 656, 115 P. 2d 418 (Idaho Sup. Ct.). It is generally recognized, for example, that the use of threats of violence for purposes of collecting a valid and enforceable debt constitutes extortion. See, *e.g.*, *People* v. *Maranian*, 359 Mich. 361, 102 N.W. 2d 568 (Mich. Sup. Ct.); *State* v. *Richards*, 97 Wash. 587, 167 Pac. 47 (Wash. Sup. Ct.); cf. *People* v. *Conforti*, 72 N.Y.S. 2d 458 (Kings Cty. Ct.). And see n. 4, *supra.*

statute impermissibly vague. The point is not well taken. The Hobbs Act punishes persons who interfere with interstate commerce by obtaining, or seeking to obtain, property by the "wrongful use" of force or violence. It expressly excludes from its reach labor activity that is legitimate under various labor statutes. See Section 2(c) of the Act, 18 U.S.C. 1951(c); and see discussion *infra*, pp. 12–13. Whether, apart from the protected activity under Section 2(c), the alleged violent or threatening conduct violates the extortion provision of the federal statute turns, as with all other criminal statutes, on the matter of criminal intent. If the jury can reasonably infer from the facts presented that the conduct was intended to force the victim to pay money in response to threatened or actual violence, and was not merely "the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation * * *" (*United States* v. *Caldes and Lowery*, 457 F. 2d 74, 78 (C.A. 9)), it can properly return a guilty verdict. There was no cause in this case to dismiss the indictment and thus deprive the jury of the opportunity to make that determination.

III. SECTION 602 OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT IS CONSISTENT WITH THE CONSTRUCTION OF THE HOBBS ACT URGED BY THE GOVERNMENT

Finally, contrary to appellees' submission (Br. pp. 41–47), there is nothing in Section 602 of the Labor-Management Reporting and Disclosure Act that conflicts with our reading of the Hobbs Act. Section 602 prohibits "shake down" or "extortionate" picketing—that is, picketing solely for the illicit purpose of ob-

taining from the employer a personal pay-off to withdraw the picket lines.[9] But so, too, does such activity constitute a "wrongful use of ~~force~~ fear" within the extortion provision of the Hobbs Act, which is precisely why Congress amended the penalty provision of Section 602 to bring it into line with the earlier criminal extortion statute.[10]

On the other hand, neither Act proscribes peaceful picketing for higher wages. Just as such activity is exempted by express parenthetical exclusion from Section 602 coverage, it is likewise removed from the

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[9] The provision makes it a felony, punishable by a maximum fine of $10,000, or up to twenty years imprisonment, or both, "to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent." 73 Stat. 539, 29 U.S.C. 522.

[10] See 105 Cong. Rec. 6530 (remarks of Sen. John F. Kennedy); 105 Cong. Rec. 6430, 7631 (remarks of Sen. Goldwater). Appellees acknowledge that the Hobbs Act can properly reach such activity. See, *e.g.*, *United States* v. *Kramer*, 355 F. 2d 891 (C.A. 7), certiorari granted and cause remanded for resentencing, but otherwise certiorari denied, 384 U.S. 100; *Bianchi* v. *United States*, 219 F. 2d 182 (C.A. 8), certiorari denied, 349 U.S. 915; *Callanan* v. *United States*, 223 F. 2d, 171 (C.A. 8), certiorari denied, 350 U.S. 862.

In cases like *Bianchi* and *Callanan*, where the means employed are on the surface the usual collective bargaining weapons, including the use of fear of economic loss caused by the threat of a strike, there can be a "wrongful" use of ~~force~~ fear to exact payments within the condemnation of the Hobbs Act only if the objective is illegal. Force and violence and threats thereof, on the other hand, are plainly "wrongful" absent a showing of justification, and neither the Hobbs Act nor any other federal statute affords protection for such conduct, whatever might be the perpetrators' objective.

reach of the Hobbs Act by the savings clause of Section 2(c), 18 U.S.C. 1951(c), relating to labor statutes already in force that protect legitimate strike methods to obtain higher wages.[11] Although Congress recognized peaceful economic picketing as a permissible use of power by employees, it does not follow, as appellees urge, that the legislature intended in the Hobbs Act to sweep within the protection of legitimate labor activity in Section 2(c) the type of violence charged here, simply because the objective was to obtain "higher wages and other monetary benefits" (App. C, p. 14a). As this Court observed in *United States* v. *Green, supra,* 350 U.S. at 420, nothing in any of the labor statutes mentioned in Section 2(c) "indicates any protection for unions or their officials in attempts to get personal property through threats of force or violence. These are not legitimate means for improving labor conditions." [12]

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[11] Section 2(c) provides that the Hobbs Act shall not be construed to repeal, modify or affect, *inter alia*, sections 7 and 8(b) of the National Labor Relations Act, 29 U.S.C. 157 and 158(b). Those sections recognize as legitimate labor activity economic strikes that are free from actual or threatened violence. Indeed, such a peaceful expression by employees generally enjoys constitutional protection. See, *e.g.*, *National Labor Relations Board* v. *Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 77–80 (Black, J. concurring). But even in upholding a union's right to picket, this Court has recognized that peaceful labor union activity "when blended with violence, may have a significance which neutralizes the constitutional immunity which such acts would have in isolation." *American Federation of Labor* v. *Swing*, 312 U.S. 321, 323.

[12] Appellees assert that an application of the Hobbs Act in the present context "would mark a major federal encroachment upon a traditional state domain" (Br. p. 60). This argument is unsound. As we have already shown (p. 10, *supra*), Congress

CONCLUSION

For the reasons stated herein and in our main brief, it is respectfully submitted that the judgment of the district court should be reversed and the indictment reinstated.

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was fully aware that many states had extortion statutes containing language similar to that used in the Hobbs Act. It made the considered judgment that federal legislation in the same area, which pertained as fully to labor unions as to all others (see pp. 3–4, *supra*), was needed to prevent "physical violences by members of labor unions on those engaged in interstate commerce." 91 Cong. Rec. 11913 (Remarks of Congressman Whittington). Enactment of the Hobbs Act to achieve that end is plainly a valid exercise of the commerce power. See *United States* v. *Green*, *supra*, 350 U.S. at 421; *Hulahan* v. *United States*, 214 F. 2d 441 (C.A. 8).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 71-1193

UNITED STATES OF AMERICA,
Appellant,

vs.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON AND MILTON WOODWARD.

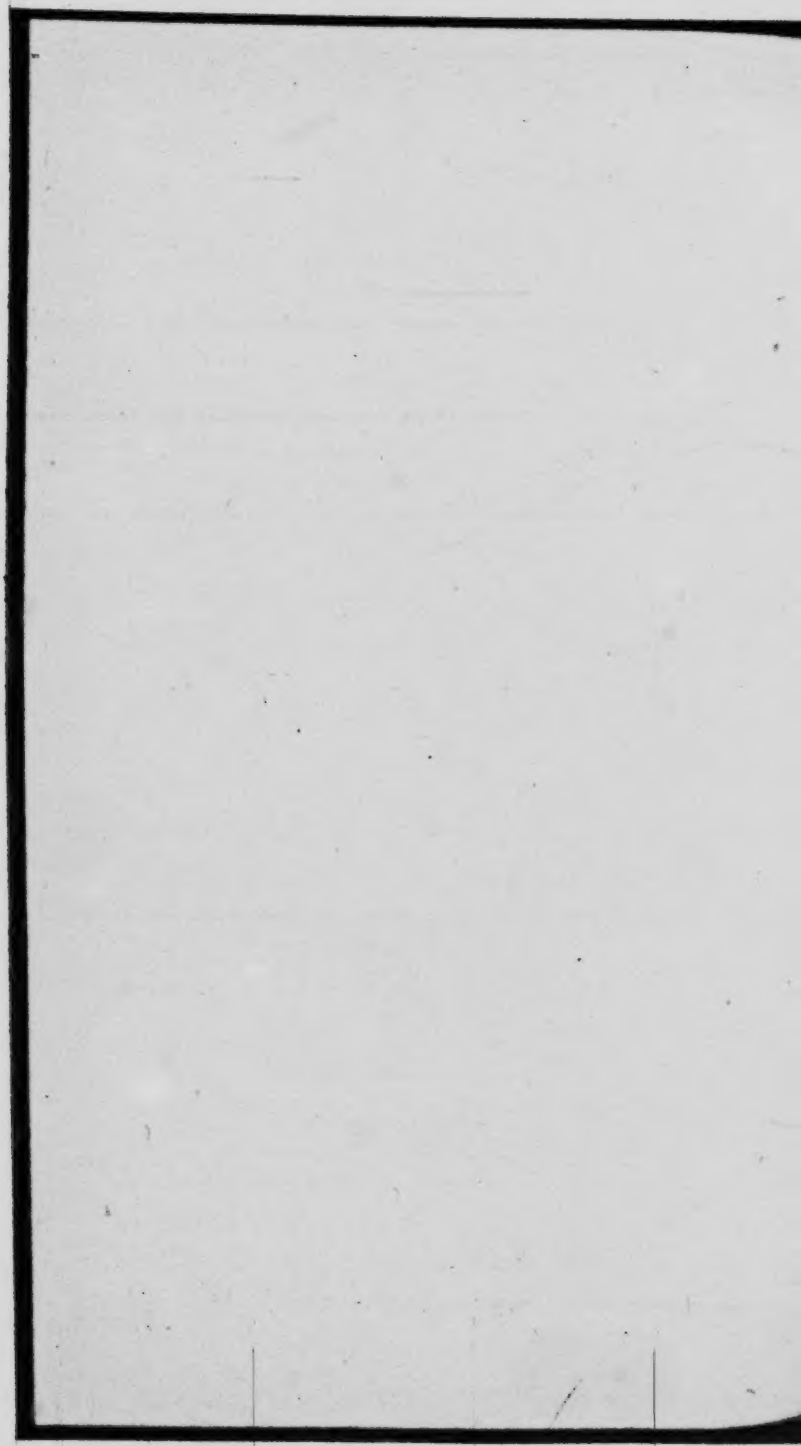
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA.

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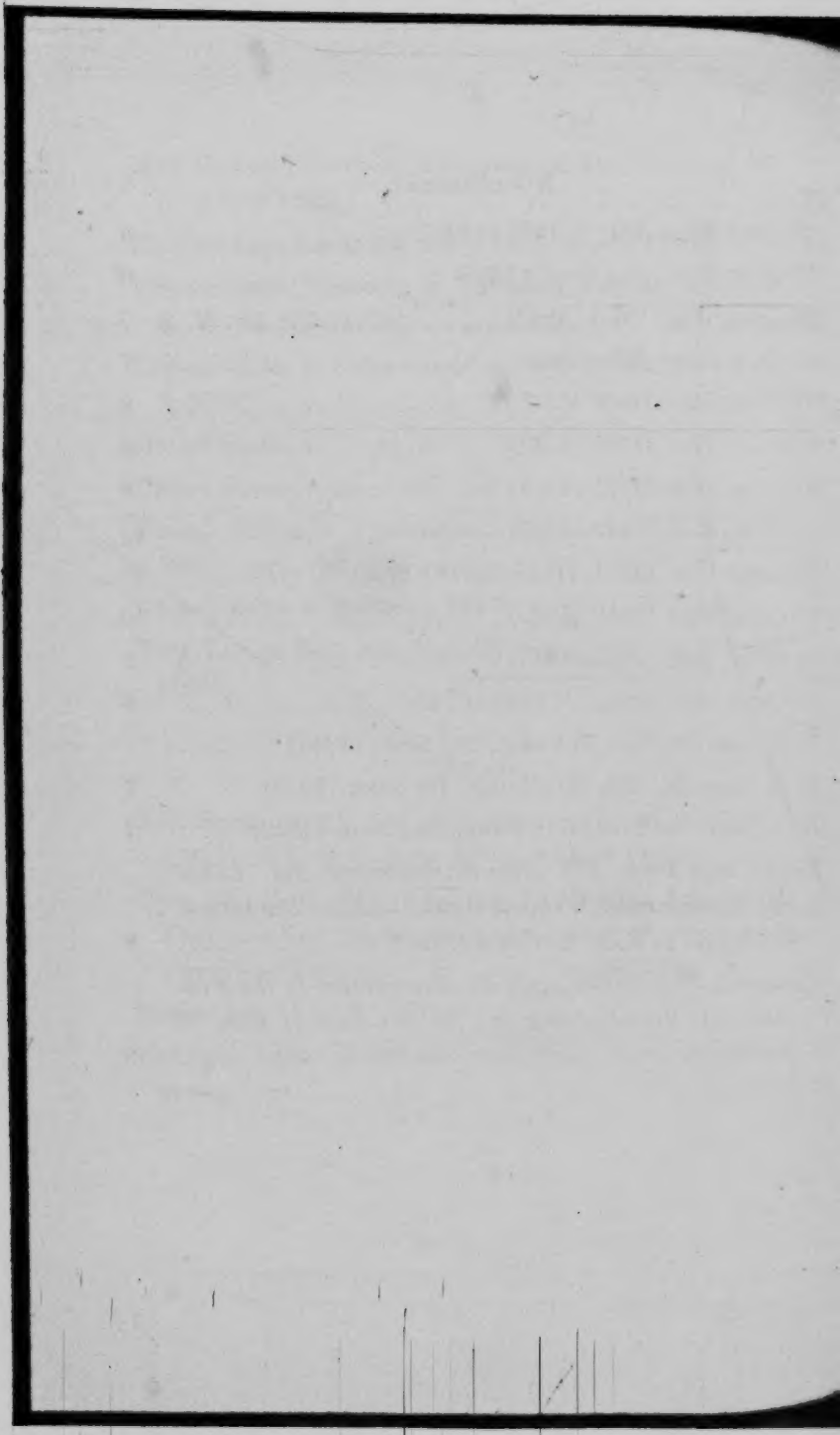
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BRIEF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA.

INTEREST OF THE AMICUS CURIAE.

The Chamber of Commerce of the United States is a federation consisting of a membership of over thirty-seven hundred (3700) state and local chambers of commerce and professional and trade associations, a direct business membership in excess of thirty-eight thousand (38,000), and an underlying membership of approximately five million

(5,000,000) business firms and individuals. It is the largest association of business and professional organizations in the United States.

The Chamber has appeared as *amicus curiae* in this Court in a wide range of labor relations matters which have substantially affected the legitimate and vital interests of its members. Examples of such cases in which the Chamber has recently participated include *N. L. R. B.* v. *Pittsburgh Plate Glass Co.*, ____ U. S. ____, 30 L. Ed. 2d 341 (1971); *Boy's Markets* v. *Retail Clerks Union*, 398 U. S. 235 (1970); *N. L. R. B.* v. *Burns International Security Services, Inc.*, ____ U. S. ____, 80 LRRM 2225 (1972); *H. K. Porter Co.* v. *N. L. R. B.*, 397 U. S. 99 (1970); *Sears, Roebuck and Co.* v. *Carpet Layers, Local 419*, 397 U. S. 655 (1970); and *Los Angeles Herald Examiner* v. *Kennedy*, 400 U. S. 3 (1970).

During this very Term, the Chamber has also participated as *amicus curiae* in *N. L. R. B.* v. *Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO*, No. 71-7111; *N. L. R. B.* v. *International Van Lines*, No. 71-895; *Sid Harvey, Inc. and Sid Harvey Brooklyn Corp.* v. *Local 810, et al.*, No. 72-556; *Phelps Dodge Corporation* v. *AFL-CIO Joint Negotiating Committee for Phelps-Dodge Corporation, et al.*, Nos. 72-220, 72-359; and *Terminal Freight Cooperative Association, et al.* v. *N. L. R. B.*, No. 72-501.

The participation by the Chamber in the cited matters has been a function of the importance of the issues they presented, conceptually and practically, to the Chamber's members, constituting the broadest and most comprehensive class of employers in commerce. Moreover, this Court has recognized in *UAW* v. *Scofield*, 382 U. S. 205 (1965), that the interests of parties who are aggrieved by unlawful conduct are not identical to those of the government's agents and agencies which prosecute or seek to remedy such

unlawful conduct. This Court has therefore determined that such aggrieved parties should be permitted to participate in the appellate deliberation of matters affecting their vital interests even where, as in *Scofield*, no express statutory basis existed for their doing so. One of the principles which has motivated the Chamber to seek participation in this Court in selected labor matters is that absent such participation the views of those uniquely affected by the challenged unlawful conduct would not find expression here. *(E.g., N. L. R. B.* v. *Granite State Joint Board, et al.)*

The instant case satisfies both criteria. The question presented, whether the penalties of fine and imprisonment provided under the Hobbs Act (18 U. S. C. 1951) apply to acts of violence committed by unions for the purpose of coercing employers to consent to higher wages or other contract demands, is of enormous importance to the Chamber's members since they belong to the class of persons whom the Hobbs Act was intended to protect. Such employers are currently without a genuinely effective, reliable and uniform deterrent against acts of violence committed by unions or employees in aid of collective bargaining objectives which cannot otherwise be obtained.

The obvious significance of securing the protection of such a legal deterrent, coupled with the fact that the parties to the instant proceeding include no employers for whose benefit the statute in question was enacted, impels the Chamber respectfully to submit its views to the Court.

SUMMARY OF ARGUMENT.

The enactment by Congress in 1946 of the Hobbs Act represented an effort to establish the principle that acts or threats of violence by labor unions and their agents would not be immune from federal anti-racketeering laws, regardless of whether the purpose of such violent conduct was to extract monies from employees in the absence of a bona fide employment relationship or whether such conduct occurred in the context of a collective bargaining relationship.

The deliberate omission from the Hobbs Act of all language which would except from the Act's coverage the activity of labor unions or their agents,—language which appeared in the predecessor Anti-Racketeering Act of 1934,—reflected a Congressional purpose to prescribe *improper means* by which agents of labor unions or others might seek to obtain the property of another and without regard either to the propriety of the objectives sought if pursued by legitimate means, or the nature of the property to be extracted.

The protections provided by the Hobbs Act to employers who are victimized by threats and acts of violence in order to obtain from them greater wages or benefits are needed since there does not now exist any comparable or reliable and effective alternatives to the deterrent effect of that statute. Moreover, while the Hobbs Act affords such needed protection to potentially aggrieved employers, its enforcement against employees and union agents offends no legitimate interests of labor organizations.

ARGUMENT.

A. LEGISLATIVE HISTORY AND THE TERMS OF THE STATUTE ITSELF DEMONSTRATE CONGRESS' INTENT THAT THE PROSCRIPTIONS OF THE HOBBS ACT EXTEND TO ALL LABOR DISPUTES.

1. The Legislative Debates.

The Hobbs Act is a successor statute to the Coleman Act of 1934, popularly known as the Anti-Racketeering Act, the first federal anti-racketeering statute.[1] That statute provided in pertinent part:

> "Section 2. Any person, who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce . . . (a) obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence or coercion, the payment of money or other valuable considerations . . . *not including, however, the payment of wages by a bona fide employer to a bona fide employee;* . . . (d) . . . shall, upon conviction thereof, be guilty of a felony . . .".

In addition to the italicized language quoted in Section 2 above, the 1934 Act also included other exclusionary language designed to insulate the conduct of labor unions from the reach of the statute:

> "Section 3(b). The terms 'property', 'money', or 'valuable considerations' used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee.
>
> "Section 6. . . . Provided, That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organi-

1. 48 Stat. 979 (1934), 18 U. S. C. Secs. 420(a)-420(d) (1940).

zations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

The nature of the relationship between these exclusionary provisions and the broad proscriptions which they modified did not come before this Court until 1942 in *United States* v. *Local 807, I. B. T.*, 315 U. S. 521. That case involved the question as to whether it was an offense under the Anti-Racketeering Act for persons to engage in violence for the purpose of obtaining money without rendering service therefor. The narrow issue in the case, both before the Second Circuit and this Court on review, was the propriety of the trial judge's charge to the jury that, if the jury should find that the sums paid by the employer were made to induce the defendants to cease their violent interference with his business and not for services rendered, then the sums could not be regarded as wages paid by a bona-fide employer to a bona-fide employee within the terms of the exclusionary provisions of the Act.

In concluding that the trial judge's instruction was erroneous, this Court held that these exclusionary provisions demonstrated that Congress intended to leave unaffected the "ordinary" or "familiar" activities of labor unions and that the conduct involved in *Local 807*, although it involved violence and coercion in an effort to extract wages from an employer, was such "familiar" activity. Chief Justice Stone's dissent, asserting the belief that an employer's purchase of immunity from violent interference with his business did not constitute bona-fide payments of wages to bona-fide employees under the statute, expressed his view that the Court's holding misinterpreted Congress' purpose by, in effect, immunizing all union conduct from the reach of the Act.

The subsequent passage of the Hobbs Act reflected Congress' agreement with the views of the Chief Justice and

demonstrated its will that unions should enjoy no immunity from federal legislation barring extortionate conduct. A bill to amend the 1934 Act and to undo the consequences of *Local 807* was introduced in the House by Congressman Hobbs within several months of the issuance of that decision.[2] Although a majority of the House Judiciary Committee reported favorably on the bill following the holding of hearings, the bill did not survive that session of Congress.[3] In the following year, the bill passed the House but was not reported out by the Senate Judiciary Committee.[4] In the next following session of Congress, the Seventy-Ninth, following passage by the House,[5] its provisions were incorporated into the Case bill which was then passed by Congress.[6] The Case bill was vetoed by President Truman, despite his stated agreement with the anti-racketeering portion of the measure, because it failed to state expressly that it was not intended to qualify unions' right to strike and picket *peacefully* or to take other *legitimate* and *peaceful* concerted action.[7]

The continuing Congressional desire to enact legislation rendering the conduct of labor unions subject to anti-racketeering laws, with which objective even the President was in accord, persisted unabated following the veto. For immediately following the veto message on the Case bill, the Senate called up and passed the Hobbs bill, which had

2. 88 Cong. Rec. 3101-2 (1942).

3. H. R. Rep. No. 2176, 77th Cong., 2nd Sess. (1942).

4. 89 Cong. Rec. 3230 (1943).

5. 91 Cong. Rec. 11922 (1945); H. R. Rep. No. 238, 79th Cong., 1st Sess. (1945).

6. H. R. 4908, "An Act to provide additional facilities for the mediation of labor disputes and for other purposes." 92 Cong. Rec. 6798-99.

7. H. R. Doc. No. 651, 79th Cong., 2nd Sess. (1946).

previously passed the House, and it was enacted into law upon the President's signature on July 3, 1946.[8]

The zeal with which Congress pursued the general objective to render unions subject to anti-racketeering laws and to render unlawful the coerced payment of wages is demonstrated not merely by the persistence of the effort during one Congressional session after another starting in 1942, but also in the debates which preceded the enactment of the Hobbs Act in 1946.

> "We think a mistake was made by the Supreme Court, [and] we are attempting to correct it through enacting a new law."[9]

> "It was the purpose of the Judiciary Committee [in eliminating Section 6 of the 1934 Act] to prevent the rendition of that sort of decision by any court in the future, so the language upon which that holding was based was eliminated."[10]

> "The necessity for this measure grows out of the misconstruction placed upon the anti-racketeering law enacted in 1934 by what is popularly known as the Byrnes opinion in the case of United States against Local 807. . . . Congress, at the insistance of certain labor leaders, undertook to exempt the payment *in good faith* of wages to an employee from the operation of this law, but the Supreme Court went beyond this intention of Congress, as expressed in the act of 1934,

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8. 92 Cong. Rec. June 21, 1946, at 7434; Pub. L. No. 486, 79th Cong., 2nd Sess. (1946); 79 Cong. Rec., July 3, 1946 at 8487. With respect to the legislative history of the Hobbs Act, see also Comment, *The Hobbs Act—an Amendment to the Federal Anti-Racketeering Act,* 25 No. Caro. L. Rev. 58 (1946); Brown & Peer, *The Anti-Racketeering Act: Labor and Management Weapon Against Labor Racketeering,* 32 N. Y. L. Rev. 965 (1957).

9. Representative Hancock of New York, 91 Cong. Rec. 11900 (1945).

10. Representative Summers of Texas, 91 Cong. Rec. 11909 (1945).

and . . . said it was the intention of Congress to sanction common-law robbery.'"[11] (Emphasis added.)

None of the debates distinguished the situation where threats or acts of violence were intended to coerce the payment of wages without services performed therefor, from the situation where employees intended to perform services for the wages violently extracted. Rather, the debates reveal a general disposition to remove the immunity which this Court found in *Local 807*. For in that case, an underlying premise of the Court's decision was that any conduct in which unions had in the past engaged and which was designed to promote some union interest was to be exempt from the 1934 Act, despite the presence of violence accompanying the union's activity.[12] And it was in response to that premise or rationale that Congress moved so zealously and laboriously to amend the statutory language which gave rise to such an interpretation. It follows, therefore, that the Congressional purpose in amending the 1934 Act, as the above quotes illustrate, was generally to render unions' violent conduct subject to anti-racketeering measures; the legislative purpose was not merely to specify that monies extracted without the performance of services should not be construed as "wages" within the meaning of the 1934 Act. Indeed, had Congress so limited an objective, its achievement did not require an entirely new statute hammered out over four years and a voluminous legislative history which nowhere emphasizes so restrictive a goal.

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11. Representative Jennings of Tennessee, 91 Cong. Rec. 11911 (1945).

12. In its opinion in *Local 807*, this Court expressly noted: "We have expressed our belief that Congress intended to leave unaffected the ordinary activities of labor unions. . . . The test must, therefore, be whether the particular activity was among or is akin to labor union activities with which Congress must be taken to have been familiar when this measure was enacted." 315 U. S. at 535.

Additional evidence from the legislative history of the board Congressional desire that violence in the name of union objectives should enjoy no greater protection from anti-racketeering laws than violence for any other purpose derives from the proposed amendments to the Hobbs bill which Congress refused to adopt. Thus, Representative Celler of New York sought to insert in the bill an exception for cases where the payment attempted to be exacted through violence or threats of violence was "wages paid by a bona fide employer."[13] Proponents of the bill argued in opposition to this amendment that it was substantially the same as the exception in the 1934 Act "which caused the error into which the Supreme Court fell when the majority opinion was rendered in the *Local 807* case".[14]

The rejection of the Celler amendment was followed by a proposed amendment by Representative LaFollette of Wisconsin which bears importantly on the question, presented in this case, as to whether Congress' purpose in enacting the Hobbs Act was merely to render unlawful violence in pursuit of wages without services to be performed therefor. Representative LaFollette's amendement would have continued the 1934 exception of "wages paid by a bona fide employer" substantially in the form in which it appeared in the 1934 Act, but would have limited "the payment of wages by a bona fide employer to a bona fide employee" to exclude any payments made in response to force or violence.[15] This amendment was similarly rejected. Its effect, had it been adopted, would have been to reverse this Court's decision in *Local 807;* the exception to the operation of the 1934 Act for cases involving the payment of wages would have disappeared when violence was present, while the expansive construction of what constitutes "wages" contained in *Local 807* would have remained un-

13. 91 Cong. Rec. 11913 (1945).
14. 91 Cong. Rec. 11914 (Rep. Hobbs), 11915, 11918 (1945).
15. 91 Cong. Rec. 11919 (1945).

affected. The failure of adoption of the LaFollette amendment establishes that in enacting the Hobbs Act, Congress intended not merely to reverse a narrow judicial holding, but to reverse the premises upon which it rested and to created a broad-gauged law in which violence or threats of violence by unions is accorded no greater immunity or respectability than the same conduct perpetrated by any other agency. A restrictive reading of the Hobbs Act, as is sought in this case, to exclude from its coverage violence by unions for the purpose of extracting wages for which services will be performed is without warrant in the legislative history of the statute.

While this Court has recognized in *United States* v. *Green*[16] that one result of the Hobbs Act was to overturn the specific holding in *Local 807*, the Court also recognized the achievement by Congress of a broader purpose:

> "The legislative history makes clear that the [Hobbs] Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship."

The method chosen by Congress to bring labor union excesses within the reach of the Hobbs Act was to avoid distinctions between the *objectives* of violent conduct,—the vice of the 1934 Act as interpreted by *Local 807*,—but to focus instead on the *means* chosen to achieve those objectives. Thus, according to *U. S.* v. *Green*, the violent acts perpetrated by the union in that case became subject to the proscription of the Hobbs Act not because the wages to be extracted were for unwanted services, but because the violent acts committed "are not legitimate *means* for improving labor conditions".[17] (Emphasis added). The illegitimacy of violence as a means for promoting unions'

16. 350 U. S. 415 (1956).
17. 350 U. S. at 420.

interests applies equally whether or not services are to be performed for the wages sought to be violently extracted.[18]

2. The Terms of the Statute.—

As enacted, the Hobbs Act contains no limitations or qualifications either with respect to who may violate its terms or whether there exist any objectives the violent pursuit of which may be exempt from the statute's reach. On its face, the Act applies to "whoever in any way" affects commerce by obtaining another's property, with his consent, by means of actual or threatened force or fear; no effort was made to formulate or even imply any distinction between legitimate or improper ends to which actual or threatened violence may be applied. Similarly, each of the three specific exclusionary clauses which had been inserted in the 1934 Act in order to protect or insulate union conduct was deleted from the Hobbs Act. Thus, Congress omitted from the Hobbs Act the prior exemption for payments of wages by a bona-fide employer to a bona-fide employee (Section 2(a) of the 1934 Act); omitted the definition of "property" which excluded the payment of wages (Section 3(b)); and omitted the interpretive direction that the statute should not be construed to impair or affect the rights of unions in carrying out their legitimate objects (Section 6).

The combination of the unqualified terms of the statute, together with the omission of all limiting references to unions' coverage thereunder,[19] requires the conclusion that

18. See, for example, *U. S.* v. *Sweeney*, 262 F. 2d 272 (CA 3, 1959), where the objectives of a union steward were to secure an increase in wages and payments into a welfare fund for employees whose services were utilized and desired.

19. In Title II of the Hobbs Act, Congress provided that nothing contained therein should be construed to repeal, modify or affect the Clayton Act, Norris-LaGuardia Act, Railway Labor Act or National Labor Relations Act. However, since nothing contained in any of those statutes is incompatible or inconsistent with or duplicative of the Hobbs Act, Title II cannot be considered as a limitation on unions' coverage under Hobbs. *U. S.* v. *Green*, *supra*.

Congress intended unions to be unqualifiedly subject to its terms. The deliberate omission of the former Section 6 is particularly significant in this connection since that Section of the 1934 Act was susceptible of the interpretation that any union's objective not itself unlawful and arguably in the union's self-interest would be immune from the coverage of Congress' anti-racketeering laws despite its pursuit by violent means.

As noted above, it is not rational to impute to Congress' enactment of the Hobbs Act an intent other than to render all union conduct unqualifiedly subject to its terms. Had Congress the lesser purpose, as urged by appellees herein, merely to amend the 1934 Act to provide that efforts to secure wages for unwanted or fictitious services should be covered, then quicker and simpler means than the enactment of a wholly new law were available: Congress could have achieved that limited result by amending Section 2(a) of the 1934 Act to define "bona fide employees" as those whose services were desired; or Section 3(b) could have been amended to provide that monies sought for unwanted services should not be deemed to be "wages". Congress' failure to adopt either or a similar course establishes that it had a different and broader objective.

B. THE BASES FOR THE REFUSAL BY THE COURT BELOW TO APPLY THE HOBBS ACT IN A COLLECTIVE BARGAINING CONTEXT LACK MERIT.

The Court below premised its conclusion that the prohibitions of the Hobbs Act do not apply to efforts to extract wage concessions during contract negotiations on two premises: first, the Hobbs Act was said to extend only to situations in which wages were to be extracted for unwanted services; and second, that where a union's ultimate objective in securing wages is lawful, although the means used may be violent, such wages do not constitute "property" within the Hobbs Act definition of extortion. The view that

the operation of the Hobbs Act requires either an unlawful end or unwanted services is incorrect as an interpretation of legislative history, as noted *supra*, as a reading of *U. S.* v. *Green*, which distinguished between legitimate and illegitimate *means* for securing improved labor conditions, and as a matter of logic. For no explanation has been offered to demonstrate why Congress, anxious to curb the use of violence in forcing employers to relinquish their property, should have intended to except instances where the use of such violence by a union is a result of the union's failure to achieve its objectives by peaceful and legitimate means by which the same objectives might have been achieved. Even should one disregard the terms of the statute itself, which do not condition its operation on the nature of the object on whose behalf violence may be exercised, and also disregard the statute's express reach to "*Whoever* in *any* way or degree obstructs, delays or affects commerce . . .", there nonetheless remains no basis in the legislative history or the statute itself for concluding that Congress affirmatively desired to leave uncovered acts of violence in connection with an objective which would be permissible absent such violence. It is no answer to say that the redress for the harms thus committed should in such cases be left to local law and authorities since the same argument is equally valid as applied to situations clearly covered by the Hobbs Act where local remedies would also otherwise be available.

Nor is there adequate basis in logic for distinguishing between the treatment of wages as property in situations where force is used to secure such wages for unwanted services as opposed to those situations where force is used to secure additional wages for wanted services. In both instances the funds sought belong to another who has determined, as he has a right to do, not to give them. It is true that the proposed recipients of the wages in the two instances are different classes of persons, non-em-

ployees and employees; but it is unclear how the identity of the person who would secure such wages by violent means could affect the nature of those wages as "property". Given the same funds of the same person in the two situations described, equally unwillingly given, equally secured only by resort to the same acts of actual or threatened violence, the same conclusion should follow: both instances represent the wrongful taking of the property of another in violation of the Hobbs Act. Apart from the logic of this conclusion, there also exist a series of authorities which hold that where business concerns deplete assets which would otherwise be used to carry on their businesses in order to make payments induced by violence, that constitutes an effect on commerce sufficient to bring the matter within the proscriptions of the Hobbs Act.[20] The forced payments of additional wages for services which, but for the presence of violence would not be made, would appear to have the requisite impact on commerce. It would be anomalous to conclude that improperly extracted payments of wages to union agents affect commerce within the Hobbs Act but do not involve the transfer of "property" within the same Act. So quixotic an interpretation of the statute should be avoided.

C. THE HOBBS ACT SHOULD BE APPLIED AS A MATTER OF SOUND POLICY TO THE EXERCISE OF VIOLENCE IN COLLECTIVE BARGAINING SITUATIONS.

In order to inhibit the use of violence as a means for securing collective bargaining concessions not otherwise obtainable, the strongest deterrent is warranted and needed. Current remedies are not demonstrably adequate to constitute such an effective deterrent. Local or state

20. *U. S.* v. *Provenzano*, 334 F. 2d 678 (CA 3, 1964), cert. den. 379 U. S. 947; *Esperti* v. *U. S.*, 406 F. 2d 148 (CA 5, 1969), cert. den. 395 U. S. 938.

remedies vary in the nature of their coverage, the severity of the penalties which they impose, and the reliability of their enforcement. Reliance upon local remedies is not consistent with Congress' desire to create uniformly effective and concedely harsh penalties for conduct which by its nature tends to create irreparable harm without legal, social or moral justification. Absent the application of the Hobbs Act, no federal statute or system of laws exists to achieve this Congressional objective.

The National Labor Relations Act, a remedial statute, was neither designed nor is it adequate to do so. While the Labor Act renders unlawful threats and acts of violence in employment, bargaining and organizational contexts,[21] the remedies provided cannot be considered a sufficient response to acts of warfare. The posting of notices, administrative cease-and-desist orders for future violations and, where appropriate, the award of back pay and the withholding of bargaining orders are no substitutes for the fine and criminal penalties imposed under the Hobbs Act.

There is an implication contained in the Ninth Circuit's recent opinion in *United States* v. *Caldes and Lowery*,[22] that the Hobbs Act may not have been intended to cover violence in connection with existing collective bargaining relationships because the legislative debates on the National Labor Relations Act, enacted one year after the Hobbs Act and banning picket line violence in Section 8(b)(1)(A) thereof, made no reference to any such similar prior statutory prohibition. Such a suggestion is demonstrably incorrect. It is accepted doctrine that nothing contained in the Labor Act or its legislative history bars punishment under other laws for violence which may also

21. *Vera Ladies Belt and Novelty Corp.*, 156 NLRB 291 (1965); *Al Long, Inc.*, 173 NLRB No. 76 (1968); *Steelworkers Local 586*, 174 NLRB No. 34 (1968); *Casino Operations, Inc.*, 169 NLRB No. 43 (1968); *Laura Modes Co.*, 144 NLRB 1592 (1963).

22. 457 F. 2d 74 (CA 9, 1972).

be the subject of NLRB proceedings; similarly, Congressional silence on the subject during its deliberations has never been held to establish Congress' desire to restrict relief, where violence occurs in a collective bargaining context, to the remedies provided under the National Labor Relations Act.[23] On the contrary, relief has regularly been provided by the States for such acts of violence, with judicial approval. Because the matter is not pre-empted to the processes of the Board, such relief may also be provided by another federal statute where Congress has determined, as here, not to rely on the nature and limits of the States' ability or willingness to act.[24]

Moreover, it is conceded by the court below that picket line violence for the purpose of obtaining wages where no services are to be performed constitutes a violation both of the Hobbs Act as well as Section 8(b)(1)(A) of the Labor Act. It cannot, therefore, follow either that relief under the Labor Act obviates the need for Hobbs Act relief for the same acts of violence, or that Congress intended one or the other statute, but not both, to apply to any given situation.

In sum, unions' legitimate interests do not require immunity from the Hobbs Act and employees' right to engage in concerted activity will not be inhibited by coverage under that Act. The consequences of violence in a bargaining context are adverse to employees' rights as well as employers' rights; however, the National Labor Relations Act does not and cannot afford adequate protection from the consequences of such violence nor can it serve as an effective deterrent. Since redress for violent acts in a collective

23. *Milk Wagon Drivers* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287 (1941); *Masonite Corp.* v. *Woodworkers*, 215 So. 2d 691, cert. den. 394 U. S. 974 (1969); *United Farm Workers* v. *LaCasita Farms, Inc.*, 439 S. W. 2d 298 (1968).

24. See *Amalgamated Motor Coach Employees* v. *Lockridge*, 403 U. S. 274, fn. 7 (1971).

bargaining relationship is not pre-empted to the NLRB, the demonstrable Congressional concern for effective means to combat and prevent such conduct should be interpreted to have invested in the Hobbs Act the means by which to achieve this objective.

CONCLUSION.

For the reasons stated herein, as well as those previously given by the Appellant, it is urged that the decision below be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, *Appellant*

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD, *Appellees*

On Appeal from the United States District Court for the Eastern District of Louisiana

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MOTION OF APPELLEES FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Appellees move the Court for leave to file a supplemental brief limited to the Government's contention, asserted for the first time in its reply brief, that a threat to compel payment of a just debt is extortion although the end sought does not constitute felonious misappropriation of property (Gov't. reply br. p. 10).

Although our brief was filed on September 20, 1972, the Government did not serve its reply brief until the evening of November 29, 1972, so that we had no prior adequate opportunity to respond to this particular contention. Accordingly, in order to complete our presentation in response to the Government's position, we respectfully request leave to file the supplemental brief, attached hereto, confined to this matter.

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On Appeal from the United States District Court for the Eastern District of Louisiana

---

SUPPLEMENTAL BRIEF FOR APPELLEES

To support its general position that, without regard to felonious misappropriation of property as the end sought, the exertion of wrongful means alone establishes extortion, the Government asserts that a threat to compel payment of a just debt is extortion despite the absence of larcenous intent (Gov't. reply br. p. 10). We shall show that, at the time that the Hobbs Act was enacted, this was not the New York view, that it represents a disputed line of authority, and that it is at best

a by-road without relevance in ascertaining the meaning of Congress when it prohibited obstruction of commerce "by robbery or extortion."

1. *New York law*: It is common ground that New York law was Congress' point of reference when it prohibited "robbery or extortion" obstructing commerce. At the time that the Hobbs Act was passed, the sole "debt" case in New York of which we know was *People* v. *Griffin,* 2 Barb. (N.Y.) 427 (1848), and that case squarely supports our analysis. There, the accused was charged "with having written letters to Stephen Heath, threatening to burn and destroy his property unless he would send the defendant, within a certain time, the sum of $16, claimed by the defendant to be due from Heath" (*id.* at 427). An instruction was refused that it is not extortion "to obtain, by threats, money that is justly due to the one who makes the threats" (*id.* at 428). An ensuing conviction was reversed for failure to give the requested instruction. The court explained that (*id.* at 429-430):

> The intent must be to *extort* or *gain.* Can it be truly said that a person extorts money which is justly his due? The word *gain,* in the connection here used, I regard as synonymous with *extort*: at least I think it must mean something more than merely to obtain, or get possession of. If that was all the legislature intended by it, it seems to me they would have employed different language. In view of the well established rule, that penal statutes are to receive a strict construction, I must interpret this as intending to embrace only cases where the intent is to obtain that which in justice and equity the party is not entitled to receive. The end, as well as the means employed to obtain it, must be wrongful and unlawful. [Emphasis in original.]

Larcenous intent coupled with wrongful means was thus held to be requisite. In 1952, *subsequent* to enactment of the Hobbs Act, in a case not cited by the Government, a different view was expressed on appeal by one New York court, *People* v. *Fichtner,* 281 App. Div. 159, 118 N.Y.S. 2d 392 (1952), but the view of the *Fichtner* court did not survive New York's comprehensive restatement of its penal law in 1965. In 1965, New York explicitly embraced extortion within the crime of larceny. 39 McKinney's Cons.L. of N.Y. Anno., Penal Law, Art. 155. It defined "larceny" as follows (§ 155.05-1):

> A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

It made the intent specified in the quoted § 155.05-1 indispensable to a conviction of larceny (§ 155.05-2):

> Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

And among "the following ways" in which larceny could be committed, if the prescribed intent was found, was "By extortion" (§ 155.05-2(e)). Accordingly, extortion requires, as stated in § 155.05-2, "a *wrongful* taking, obtaining or withholding of another's property, with the intent", as stated in § 155.05(1), "to deprive another of property or to appropriate the same to himself or to a third person . . . ."

The comment on this restatement is that "extortion in its true sense is nothing more than a wrongful acquisi-

tion of property (by intimidation) *with larcenous intent* (cf. former Penal Law § 850)." 39 McKinney's Cons. L. of N.Y. Anno., Penal Law, § 155.05, p. 419. (Emphasis supplied.) Accordingly, precisely as we have argued, felonious misappropriation of property is an essential element of extortion.

To make certainty doubly sure, New York in 1965 also expressly adopted the following defenses (§ 155.15):

> 1. In any prosecution for larceny committed by trespassory taking or embezzlement, it is an affirmative defense that the property was appropriated under a claim of right made in good faith.
>
> 2. In any prosecution for larceny by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

The comment on subdivision 1 is that the "provision is perhaps unnecessary, for it would seem that a defendant who establishes that his taking was 'under a claim of right made in good faith' automatically negates larcenous intent . . ." 39 McKinney's Cons.L. of N.Y. Anno., Penal Law, § 155.15, p. 446. "Subdivision 2", the comment states, "is borrowed from a comparable provision of the American Law Institute's Model Penal Code (§ 223.4). Its principal purpose is to exclude from criminal liability the victim of a larceny or other crime causing financial loss, who threatens the thief or culprit with criminal prosecution based upon the conduct involved unless he makes good the loss"

(*ibid.*). The cited section of the Model Penal Code provides that:

> It is an affirmative defense to prosecution based on paragraphs (b), (c) or (d) that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

The upshot is that in the so-called "debt" area, which the Government would uncritically transpose to the wholly different context in which the Hobbs Act operates, the Government's version of extortion was not when the Hobbs Act was passed, and is not now, the law of New York.

2. *Disputed line of authority*: The Government represents its view of extortion in the "debt" cases as if it were uniformally accepted. The fact is, however, that the Government relies on a disputed line of authority. The view espoused by the Government is not shared by Massachusetts (*Commonwealth* v. *Jones,* 121 Mass. 57 (1876)), Indiana (*State* v. *Hammond,* 80 Ind. 80 (1881)), Mississippi (*State* v. *Ricks,* 108 Miss. 7, 66 So. 281 (1914)), Ohio (*State* v. *Barger,* 111 Ohio St. 448, 145 N.E. 857 (1924)), or Washington (*State* v. *Burns,* 161 Wash. 362, 297 P. 212 (1931)). Furthermore, as robbery and extortion are interlocked felonies, it is significant that one who collects a debt or supposed debt at gunpoint, while guilty of an assault, is not generally held guilty of robbery, at least if the debt is liquidated and the creditor takes no more than is owed him, for there is no larcenous intent. *Richardson* v. *United States,* 403 F.2d 574 (C.A.D.C., 1968); *Butts* v. *Com-*

monwealth, 145 Va. 800, 133 S.E. 764 (1926); *People* v. *Gallegos,* 130 Colo. 232, 274 P. 2d 608 (1954); *People* v. *Butler,* 65 Cal.2d 569, 421 P.2d 703 (1967).

3. *The Government's cases:* The cases on which the Government relies stand for a good deal less on analysis than the Government would have it. In *People* v. *Beggs,* 178 Cal. 79, 172 P. 152 (1918), the accused sought to defend the extraction of $2,000 on the ground that the victim owed him $50. As to *State* v. *Richards,* 97 Wash. 587, 167 P. 47 (1917), in 1931 the Washington Supreme Court repudiated an overbroad reading of its prior opinion, and of prior like opinions in other states, holding that there is no extortion if the threat is limited to the amount due. *State* v. *Burns,* 161 Wash. 362, 297 P. 212 (1931). In *State* v. *Phillips,* 62 Id. 656, 115 P.2d 418 (1941), the court approved a jury institution that "you have a right to take into consideration whether or not the defendants, or either of them, honestly believed that the defendant Phillips was entitled to a refund from the said Gertje" (115 P.2d at 421). And in *Ine re Sherin,* 27 S.D. 232, 130 N.W. 761 (1911), the question arose in a disbarment proceeding, not in a criminal prosecution for extortion.

4. *The upshot:* The Government detours on a byroad of a disputed line of "debt" cases despite the absence of a whisper in the legislative history of the Hobbs Act that its proponents even knew of them. It disregards the main stem of robbery and extortion as compound crimes combining felonious misappropriation of property and wrongful means. It would have us overlook that, in the immediately relevant area of labor action, it is the felonious misappropriation of property that divides the licit from the illicit in determining whether conduct is extortionate (our brief pp.

37-40). It remains indifferent to its inability to cite a single case from any jurisdiction in which strike violence to obtain better employment terms was held or even suggested to be extortionate. It was better advised when it informed the Court on brief in the *Local 807* case that (p. 46):

> If the defendants had been seeking to achieve a legitimate labor objective, we doubt whether their activities would come within the scope of the Act simply because of the presence of violence. The whole tenor of the Act indicates that Congress intended to punish activities similar to extortion; violence used as a means of obtaining a lawful labor union objective is not extortion but simply a breach of the peace or other kindred unlawful act.

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December 1972

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* ENMONS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

No. 71–1193. Argued December 4, 1972—
Decided February 22, 1973

The Hobbs Act, which makes it a federal crime to obstruct interstate commerce by robbery or extortion, does not reach the use of violence (which is readily punishable under state law) to achieve legitimate union objectives, such as higher wages in return for genuine services that the employer seeks. Pp. 3–16.

335 F. Supp. 641, affirmed.

STEWART, J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ., joined. BLACKMUN, J., filed a concurring opinion. DOUGLAS, J., filed a dissenting opinion, in which BURGER, C. J., and POWELL and REHNQUIST, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 71–1193

United States, Appellant, *v.* Travis Paul Enmons et al. | On Appeal from the United States District Court for the Eastern District of Louisiana.

[February 22, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

A one-count indictment was returned in the United States District Court for the Eastern District of Louisiana charging the appellees with a violation of the Hobbs Act, 18 U. S. C. § 1951. In pertinent part, that Act provides:

> "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both."

"Extortion" is defined in the Act, as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear. . . ." 18 U. S. C. § 1951 (b)(2).

At the time of the alleged conspiracy, the employees of the Gulf States Utilities Company were out on strike. The appellees are members and officials of labor unions that were seeking a new collective-bargaining agreement

with that company. The indictment charged that the appellees and two named co-conspirators conspired to obstruct commerce, and that as part of that conspiracy, they

> "would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company . . . , such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by [the appellees] and co-conspirators, in that [the appellees] and the co-conspirators did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits."

Five specific acts of violence were charged to have been committed in furtherance of the conspiracy—firing high powered rifles at three Company transformers, draining the oil from a Company transformer, and blowing up a transformer substation owned by the Company. In short, the indictment charged that the appellees had conspired to use and did in fact use violence to obtain for the striking employees higher wages and other employment benefits from the Company.

The District Court granted the appellees' motion to dismiss the indictment for failure to state an offense under the Hobbs Act. 335 F. Supp. 641. The court noted that the appellees were union members on strike against their employer, Gulf States, and that both the strike and its objective of higher wages were legal. The court expressed the view that if "the wages sought by violent acts are wages to be paid for unneeded or unwanted services, or for no services at all," then that

violence would constitute extortion within the meaning of the Hobbs Act. *Id.*, at 645. But in this case, by contrast, the court noted that the indictment alleged the use of force to obtain legitimate union objectives: "The union had a right to disrupt the business of the employer by lawfully striking for higher wages. Acts of violence occurring during a lawful strike and resulting in damage to persons or property are undoubtedly punishable under State law. To punish persons for such acts of violence was not the purpose of the Hobbs Act." *Id.*, at 646. The court found "no case where a court has gone so far as to hold the type of activity involved here to be a violation of the Hobbs Act." *Id.*, at 645.

We noted probable jurisdiction of the Government's appeal, 406 U. S. 916,[1] to determine whether the Hobbs Act proscribes violence committed during a lawful strike for the purpose of inducing an employer's agreement to legitimate collective-bargaining demands.

I

The Government contends that the statutory language unambiguously and without qualification proscribes interference with commerce by "extortion," and that in terms of the statute, "extortion" is "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear. . . ." Wages are the "property" of the employer, the argument continues, and strike violence to obtain such "property" thus falls within the literal proscription

[1] This appeal was taken under 18 U. S. C. § 3731 (1964). The 1972 amendment to the Criminal Appeals Act, providing that all appeals from dismissals of indictments or informations must be taken to the Courts of Appeals, does not apply to cases instituted before January 2, 1971. Omnibus Crime Control Act of 1970, Pub. Law No. 91–644, § 14, 84 Stat. 1890, codified, at 18 U. S. C. § 3731. See *United States* v. *Jorn*, 400 U. S. 470, 474 n. 1, 477–478 n. 6. The present indictment was filed on October 15, 1970.

of the Act. But the language of the statute is hardly as clear as the Government would make it out to be. Its interpretation of the Act slights the wording of the statute that proscribes obtaining property only by the "wrongful" use of actual or threatened force, violence, or fear. The term "wrongful," which on the face of the statute modifies the use of each of the enumerated means of obtaining property—actual or threatened force, violence or fear—[2] would be superfluous if it only served to describe the means used. For it would be redundant to speak of "wrongful violence" or "wrongful force" since, as the Government acknowledges, any violence or force to obtain property is "wrongful."[3] Rather, "wrongful" has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be "wrongful" because the alleged extortionist has no lawful claim to that property.

Construed in this fashion, the Hobbs Act has properly been held to reach instances where union officials threatened force or violence against an employer in order to obtain personal payoffs,[4] and where unions used the proscribed means to exact "wage" payments from employers in return for "imposed, unwanted, superfluous

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[2] Congressman Hobbs indicated that "wrongful" was to modify the entire section. 91 Cong. Rec. 11908.

[3] The Government suggests a convoluted construction of "wrongful." It concedes that when the means used are not "wrongful," such as where fear of economic loss from a strike is employed, then the objective must be illegal. If, on the other hand, "wrongful" force and violence are used, even for a legal objective, the Government contends that the statute is satisfied. But that interpretation simply accepts the redundancy of the term "wrongful" whenever it applies to "force" and "violence" in the statute.

[4] See, *e. g.*, *United States* v. *Iozzi*, 420 F. 2d 512; *United States* v. *Kramer*, 355 F. 2d 891, cert. granted and case remanded for resentencing, 384 U. S. 100; *Bianchi* v. *United States*, 219 F. 2d 182.

and fictitious services" of workers.[5] For in those situations, the employer's property has been misappropriated. But the literal language of the statute will not bear the Government's semantic argument that the Hobbs Act reaches the use of violence to achieve legitimate union objectives, such as higher wages in return for genuine services which the employer seeks. In that type of case, there has been no "wrongful" taking of the employer's property; he has paid for the services he bargained for, and the workers receive the wages to which they are entitled in compensation for their services.

II

The legislative framework of the Hobbs Act dispels any ambiguity in the wording of the statute and makes it clear that the Act does not apply to the use of force to achieve legitimate labor ends. The predecessor of the Hobbs Act, § 2 of the Anti-Racketeering Act of 1934, 48 Stat. 979,[6] proscribed, in connection with interstate

[5] See, *e. g.*, *United States* v. *Green*, 350 U. S. 415; *United States* v. *Kemble*, 198 F. 2d 889.

[6] Section 2 of the Act provided:

"Any person who, in connection with or in relation to any act in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

"(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

"(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

"(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

"(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both."

commerce, the exaction of valuable consideration by force, violence, or coercion, "not including, however, the payment of wages by a bona-fide employer to a bona-fide employee. . . ."[7] In *United States* v. *Local 807*, 315 U. S. 521, the Court held that this exception covered the members of a New York City truck drivers union who, by violence or threats, exacted payments for themselves from out-of-town truckers in return for the unwanted and superfluous service of driving out-of-town trucks to and from the city. The New York City Teamsters would lay in wait for the out-of-town trucks, and then demand payment from the owners and drivers in return for allowing the trucks to proceed into the city. The teamsters sometimes drove the arriving trucks into the city, but in other instances, the out-of-town truckers paid the fees but rejected the teamsters' services and drove the trucks themselves. In several cases there was evidence that, having exacted their fees, the city drivers disappeared without offering to perform any services at all. *Id.*, at 526. See also *id.*, at 529 (Stone, C. J., dissenting). The Court held that the activities of the city teamsters were included within the wage exception to the Anti-Racketeering Act although what work they performed was unneeded and unwanted, and although in some cases their work was rejected.

Congressional disapproval of this decision was swift. Several bills[8] were introduced with the narrow purpose

[7] See § 2 (a), quoted in n. 7, *supra*. While the specific wage exception was found only in § 2 (a) of the Act, § 3 (c) excluded "wages paid by a bona-fide employer to a bona-fide employee" from the definition of "property," "money," or other "valuable considerations." The wage exception thus permeated the entire Act. *United States* v. *Green*, 350 U. S. 415, 419 n. 4; *United States* v. *Local 807*, 315 U. S. 521, 527 n. 2.

[8] S. 2347, 77th Cong., 2d Sess.; H. R. 6872, 77th Cong., 2d Sess.; H. R. 7067, 77th Cong., 2d Sess.; H. R. 653, 78th Cong., 1st Sess.; H. R. 32, 79th Cong., 1st Sess. See *Callanan* v. *United States*, 364 U. S. 587, 591 n. 5; *United States* v. *Green*, 350 U. S. 415, 419 n. 5.

of correcting the result in the *Local 807* case.[9] H. R. 32, which became the Hobbs Act, 60 Stat. 420, eliminated the wage exception that had been the basis for the the *Local 807* decision.[10] But, as frequently emphasized on the floor of the House, the limited effect of the bill was to shut off the possibility opened up by the *Local 807* case, that union members could use their protected status to exact payments from employers for imposed, unwanted, and superfluous services. As Congressman Hancock explained:

> "This bill is designed simply to prevent both union members and nonunion people from making use of robbery and extortion under the guise of obtaining wages in the obstruction of interstate commerce. That is all it does.
>
> . . . . . .
>
> "[T]his bill is made necessary by the amazing decision of the Supreme Court in the case of the United States against Teamsters' Union 807, 3 years ago. That decision practically nullified the anti-racketeering bill of 1934 . . . . In effect the Supreme Court held that . . . members of the Teamsters' Union . . . were exempt from the provisions of that law when attempting by the use of force or the

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[9] See *United States* v. *Green*, 350 U. S. 415, 419 n. 5; Note, Labor Faces the Amended Anti-Racketeering Act, 101 U. Pa. L. Rev. 1030, 1033–1034 (1953).

[10] The Hobbs Act also eliminated the proviso in § 6 of the Anti-Racketeering Act of 1934: "That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States." That proviso was one of the supports for the *Local 807* decision, see 315 U. S., at 535, and it was eliminated to prevent reliance on that clause as a means of resuscitating the *Local 807* decision. See 91 Cong. Rec. 11912 (remarks of Rep. Hobbs).

threat of violence to obtain wages for a job, whether they rendered any service or not." 91 Cong. Rec. 11900.

Congressman Hancock proceeded to read approvingly from an editorial which characterized the teamsters' action in the *Local 807* case as "compelling the truckers to pay day's wages to local union drivers whose services were neither wanted nor needed." *Ibid.* Congressman Fellows stressed the fact that the facts of the *Local 807* case showed that "these stick-up men disappeared as soon as the money was paid without rendering or offering to render any service." 91 Cong. Rec. 11907. And Congressman Rivers characterized the facts of the *Local 807* case as "nothing short of hijacking, intimidation, extortion, and out-and-out highway robbery." 91 Cong. Rec. 11917.[11]

But by eliminating the wage exception to the Anti-Racketeering Act, the Hobbs Act did not sweep within its reach violence during a strike to achieve legitimate collective-bargaining objectives. It was repeatedly emphasized in the debates that the bill did not "interfere in any way with any legitimate labor objective or activity";[12] "there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part

[11] See also 91 Cong. Rec. 11842 (remarks of Rep. Michener); 91 Cong. Rec. 11905 (remarks of Rep. Robsion); 91 Cong. Rec. 11909 (remarks of Rep. Sumners); 91 Cong. Rec. 11912–11913 (remarks of Rep. Whittington).

In its report on the bill, the House Committee on the Judiciary reproduced this Court's decision in the *Local 807* case and concluded that "[t]he need for the legislation was emphasized by the opinion of the Supreme Court in . . . *United States* v. *Local 807* . . . ." H. R. Rep. No. 238, 79th Cong., 1st Sess., p. 10. See also S. Rep. No. 1516, 79th Cong., 2d Sess.

[12] 91 Cong. Rec. 11841 (remarks of Rep. Walter).

of labor people or labor unions. . . ." [13] And Congressman Jennings, in responding to a question concerning the Act's coverage made it clear that the Act "does not have a thing in the world to do with strikes." 91 Cong. Rec. 11912.

Indeed, in introducing his original bill, Congressman Hobbs [14] explicitly refuted the suggestion that strike violence to achieve a union's legitimate objectives was encompassed by the Act: [15]

> "Mr. MARCANTONIO. All right. In connection with a strike, if an incident occurs which involves—
> "Mr. HOBBS. The gentleman need go no further. This bill does not cover strikes or any question relating to strikes.
> "Mr. MARCANTONIO. Will the gentleman put a provision in the bill stating so?
> "Mr. HOBBS. We do not have to, because a strike is perfectly lawful and has been so described by

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[13] 91 Cong. Rec. 11908 (remarks of Rep. Sumners). See also 91 Cong. Rec. 11900 (remarks of Rep. Hancock); 91 Cong. Rec. 11904 (remarks of Rep. Gwynne); 91 Cong. Rec. 11909 (remarks of Rep. Vursell).

[14] The remarks with respect to that bill, H. R. 653, 78th Cong., 1st Sess., which passed only the House, are wholly relevant to an understanding of the Hobbs Act, since the operative language of the original bill was substantially carried forward into the Act. The congressional debates on the Hobbs Act in the 79th Congress repeatedly referred to the legislative history of the original bill. See 91 Cong. Rec. 11842 (remarks of Rep. Michener); 91 Cong. Rec. 11899–11900 (remarks of Rep. Hancock); 91 Cong. Rec. 11900 (remarks of Rep. Hobbs). Surely an interpretation placed by the sponsor of a bill on the very language subsequently enacted by Congress cannot be dismissed out of hand, as the dissent would have it, simply because the interpretation was given two years earlier.

[15] See also 89 Cong. Rec. 3202 (remarks of Rep. Gwynne) (Act does not cover "a clash between strikers and scabs during a strike").

the Supreme Court and by the statutes we have passed. This bill takes off from the springboard that the act must be unlawful to come within the purview of this bill.

"Mr. MARCANTONIO. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct?

"Mr. HOBBS. Certainly.

"Mr. MARCANTONIO. That then could become an extortion under the gentleman's bill, and that striker as well as his union officials could be charged with violation of sections in this bill.

"Mr. HOBBS. I disagree with that and deny it in toto." 89 Cong. Rec. 3213.[16]

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[16] The proponents of the Hobbs Act defended the Act as no encroachment on the legitimate activities of labor unions on the ground that the statute did no more than incorporate New York's conventional definition of extortion—"the obtaining of property from another. . . . with his consent, induced by a wrongful use of force or fear, or under color of official right." N. Y. Penal Law § 850 (1909). See 91 Cong. Rec. 11842 (remarks of Rep. Walter); 91 Cong. Rec. 11843 (remarks of Rep. Michener); 91 Cong. Rec. 11900 (remarks of Rep. Hancock); 91 Cong. Rec. 11900 (remarks of Rep. Hobbs); 91 Cong. Rec. 11906 (remarks of Rep. Robsion). See also *United States* v. *Caldes*, 457 F. 2d 74, 77; *United States* v. *Provenzano*, 334 F. 2d 678, 686.

Judicial construction of the New York statute reinforces the conclusion that, however militant, union activities to obtain higher wages do not constitute extortion. For extortion requires an intent "to obtain that which in justice and equity the party is not entitled to receive." *People* v. *Cuddihy*, 151 Misc. 318, 324, 271 N. Y. S. 450, 456 (Ct. Gen. Sess.), aff'd, 243 App. Div. 694, 277 N. Y. S. 960; see *People* v. *Weinseimer*, 117 App. Div. 603, 616, 102 N. Y. S. 579, 588, aff'd, 190 N. Y. 537. An accused would not be guilty of extortion for attempting to achieve legitimate labor goals; he could not be convicted without sufficient evidence that he "was actuated by the purpose of obtaining a financial benefit for himself . . . and was not attempting in good faith to advance the cause

The Government would derive a different lesson from the legislative history. It points to statements made during the floor debates that the Act was meant to have "broad coverage" and, unlike its predecessor, to encompass the "employer-employee" relationship. But that proves no more than that the achievement of illegitimate objectives by employees or their representatives, such as the exaction of personal payoffs, or the pursuit of "wages" for unwanted or fictitious services, would not be exempted from the Act solely because the extortionist was an employee or union official and the victim an employer.[17] The

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of unionism. . . ." *People* v. *Adelstein*, 9 App. Div. 2d 907, 908, 195 N Y. S. 2d 27, 28, aff'd *sub nom. People* v. *Squillante*, 8 N. Y. 2d 998, 169 N. E. 2d 425, 205 N. Y. S. 2d 332.

Hence, New York's highest court has interpreted its extortion statute to apply to a case where the accused received a payoff to buy an end to labor picketing. *People* v. *Dioguardi*, 8 N. Y. 2d 260, 168 N. E. 2d 683, 203 N. Y. S. 2d 870.

"The picketing here, . . . may have been perfectly lawful in its inception (assuming it was part of a bona fide organizational effort) and may have remained so—despite its potentially ruinous effect on the employers' businesses—so long as it was employed to accomplish the legitimate labor objective of organization. Its entire character changed from legality to criminality, however, when it was used as a pressure device to exact the payment of money as a condition of its cessation. . . ." *Id.*, at 271, 168 N. E. 2d, at 690–691; 203 N. Y. S. 2d, at 880.

In short, when the objectives of the picketing changed from legitimate labor ends to personal payoffs, then the actions became extortionate.

[17] The Government relies heavily on a statement by Congressman Michener, in a dialogue with two of his colleagues, to the effect that union members who "by robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a legitimate union activity." 91 Cong. Rec. 11843–11844. But Representative Michener was referring to the activity of "robbery or exploitation," and his statement continued: "I cannot understand how any union man can claim that the conduct described by Mr. Justice Stone is a legitimate union

Government would also find support for its expansive interpretation of the statute in the rejection of two amendments, one proposed by Congressman Celler, the other by Congressman LaFollette, which would have inserted in the Act an exception for cases where violence was used to obtain the payment of wages by a bona-fide employer to a bona-fide employee. See 91 Cong. Rec. 11913, 11917, and 11919, 11922. But both amendments were rejected solely because they would have operated to continue the effect of the *Local 807* case.[18] Their rejection thus proves nothing more than that Congress was intent on undoing the restrictive impact of that case.

III

In the nearly three decades that have passed since the enactment of the Hobbs Act, no reported case has upheld the theory that the Act proscribes the use of force to achieve legitimate collective-bargaining demands.

The only previous case in this Court relevant to the issue, *United States* v. *Green*, 350 U. S. 415, held no more than that the Hobbs Act had accomplished its objective of overruling the *Local 807* case. The alleged extortions in that case, as in *Local 807*, consisted of attempts to obtain so-called wages for "imposed, unwanted, superfluous and fictitious services of laborers. . . ." *Id.*, at 417. The indictment charged that the employer's consent was obtained "by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear. . . ." *Ibid.* The Government thus did not rely, as it does in the present case, solely on

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activity." *Id.*, at 11844. Chief Justice Stone's dissenting opinion in the *Local 807* case described payoffs for the superfluous and unwanted work involved in that case. See 315 U. S., at 539.

[18] See 91 Cong. Rec. 11914 (remarks of Rep. Hobbs); 91 Cong. Rec. 11914 (remarks of Rep. Walter); 91 Cong. Rec. 11920 (remarks of Rep. Gwynne).

the use of force in an employer-employee relationship; it alleged a wrongful purpose—to obtain money from the employer that the union officials had no legitimate right to demand. We concluded that the Hobbs Act could reach extortion in an employer-employee relationship and that personal profit to the extortionist was not required, but our holding was carefully limited to the charges in that case: "We rule only on the allegations of the indictment and hold that the acts charged against appellees fall within the terms of the Act." *Id.*, at 421.

A prior decision in the Third Circuit, *United States* v. *Kemble*, 198 F. 2d 889, on which the Government relied in *Green*, also concerned the exaction, by threats and violence, of wages for superfluous services. In affirming a conviction under the Hobbs Act of a union business agent for using actual and threatened violence against an out-of-town driver in an attempt to force him to hire a local union member, the Court of Appeals carefully limited its holding:

> "We need not consider the normal demand for wages as compensation for services desired by or valuable to the employer. It is enough for this case, and all we decide, that payment of money for imposed, unwanted, and superfluous services . . . is within the language and intendment of the statute." *Id.*, at 892.

Most recently, in *United States* v. *Caldes*, 457 F. 2d 74, the Court of Appeals for the Ninth Circuit was squarely presented with the question at issue in this case. Two union officials were convicted of Hobbs Act violations in that they damaged property of a company with whom they were negotiating for a collective-bargaining agreement, in an attempt to pressure the company into agreeing to the union contract. Concluding that the Act was not intended to reach militant activity in the pursuit of

legitimate unions ends, the court reversed the convictions and ordered the indictment dismissed.

Indeed, not until the indictments were returned in 1970 in this and several other cases has the Government even sought to prosecute under the Hobbs Act actual or threatened violence employed to secure a union contract "calling for higher wages and other monetary benefits." [19] Yet throughout this period, the Nation has witnessed countless economic strikes, often unfortunately punctuated by violence. It is unlikely that if Congress had indeed wrought such a major expansion of federal criminal jurisdiction in enacting the Hobbs Act, its action would have so long passed unobserved. See *United States* v. *Laub*, 385 U. S. 475, 485.

IV

The Government's broad concept of extortion—the "wrongful" use of force to obtain even the legitimate union demands of higher wages—is not easily restricted. It would cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and

[19] As noted above the indictment in *United States* v. *Caldes*, 457 F. 2d 74, was ordered to be dismissed by the Ninth Circuit. Two similar indictments returned in the Southern District of Florida, were dismissed by the District Court without opinion in June 1970. *United States* v. *Rutcofsky*, No. 70-101-CR-JE, June 24, 1970; *United States* v. *Schiffman*, No. 70-102-CR-JE, June 25, 1970. An additional indictment, based on a similar theory of the Hobbs Act, was filed in the Eastern District of New York on January 12, 1972, and is currently pending. *United States* v. *Spero*, No. 72-CR-17.

The briefs in the present case advise us of one other Hobbs Act prosecution that may have been brought under this theory—a 1962 indictment in *United States* v. *Webb*, ND Ala., No. 15080.

the possibility of 20 years' imprisonment and a $10,000 fine.[20]

Even if the language and history of the Act were less clear than we have found them to be, the Act could not properly be expanded as the Government suggests—for two related reasons. First, this being a criminal statute, it must be strictly construed, and any ambiguity must be resolved in favor of lenity. *United States* v. *Wiltberger*, 5 Wheat. 76, 95; *United States* v. *Halseth*, 342 U. S. 277, 280; *Bell* v. *United States*, 349 U. S. 81, 83; *Arroyo* v. *United States*, 359 U. S. 419, 424; *Rewis* v. *United States*, 401 U. S. 808, 812. Secondly, it would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. Neither the language of the Hobbs Act nor its legislative history can justify the conclusion that Congress intended to work such an extraordinary change in federal labor law or such an unprecedented incursion into the criminal jurisdiction of the States. See *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 247–248; *United Constr. Workers* v. *Laburnum Constr. Corp.*, 347 U. S. 656, 665; *Garner* v. *Teamsters Local 776*, 346 U. S. 485, 488; *UAW Local 232* v. *Wisconsin Employment Relations Bd.*, 336 U. S. 245, 253.

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[20] Realizing the breadth of its argument, the Government's brief concedes that there might be an exception for "the incidental injury to person or property that not infrequently occurs as a consequence of the charged atmosphere attending a prolonged labor dispute . . . ." But nothing either in the language or the history of the Act justifies any such exception.

Similarly, there is nothing to support the dissent's exception for "mischievous" conduct, *post*, p. —, even if we could begin to define the meaning and limits of such a term.

As we said last Term:

> "[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the Federal-State balance. Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the States. . . . [W]e will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction." *United States* v. *Bass*, 404 U. S. 336, 349 (footnotes omitted).

The District Court was correct in dismissing the indictment. Its judgment is affirmed.

SUPREME COURT OF THE UNITED STATES

No. 71–1193

United States, Appellant, v. Travis Paul Enmons et al. } On Appeal from the United States District Court for the Eastern District of Louisiana.

[February 22, 1973]

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion. I readily concede that my visceral reaction to immaturely conceived acts of violence of the kind charged in this indictment is that such acts deserve to be dignified as federal crimes. That reaction on my part, however, is legislative in nature rather than judicial. If Congress wishes acts of that kind to be encompassed by a federal statute, it has the constitutional power in the interstate context to effect that result. The appellees so concede. Tr. of Oral Arg. 18–19. But MR. JUSTICE STEWART has gathered the pertinent and persuasive legislative history demonstrating that Congress did not intend to exercise its power to reach these acts of violence.

The Government's posture, with its concession that certain strike violence (which it would downgrade as "incidental" and the dissent as "low level," *post* 7 n. 17), although aimed at achieving a legitimate end, is not covered by the Act, necessarily means that the legislation would be enforced selectively or, at the least, would embroil all concerned with drawing the distinction between major and minor violence. That, for me, is neither an appealing prospect nor solid support for the position taken.

This type of violence, as the Court points out, is subject to state criminal prosecution. That is where it must remain until the Congress acts otherwise in a manner far more clear than the language of the Hobbs Act.

SUPREME COURT OF THE UNITED STATES

No. 71–1193

United States, Appellant, *v.* Travis Paul Enmons et al.	On Appeal from the United States District Court for the Eastern District of Louisiana.

[February 22, 1973]

MR. JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST concur, dissenting.

The Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do. The Court considers primarily the legislative history of a predecessor bill considered by the 78th Congress. The bill before us was considered and enacted by the 79th Congress; and, as I read the debates, the opposition lost in the 79th Congress what they win today. All of which makes pertinent Mr. Justice Holmes admonition in *Missouri K & T R. Co.* v. *May*, 196 U. S. 267, 270, that "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."

In *United States* v. *Local 807*, 315 U. S. 521, we had before us the Anti-Racketeering Act of 1934, 48 Stat. 979, which made it a crime to use violence respecting interstate trade or commerce to obtain the "payment of money or other valuable considerations," excluding "the payment of wages by a bona fide employer to a bona fide employee." We held that the exception included demands for unwanted or superfluous services and covered those who wanted jobs, not only those who presently had them.

Congress in the Hobbs Act changed the law. The critical change was the exclusion of the employer-em-

ployee clause. The Court said in *United States* v. *Green*, 350 U. S. 415, 419: "In the Hobbs Act, 60 Stat. 420, carried forward as 18 U. S. C. § 1951, which amended the Anti-Racketeering Act, the exclusion clause involved in the *Local 807* decision was dropped. The legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding."

In *Green* the Court held that it was an extortion within the meaning of the Act to use force to obtain payment of wages for unwanted and superfluous services. *Id.*, at 417.

Here the services were not unwanted or superfluous; they were services being negotiated under a collective-bargaining agreement.

The Court relies mostly on the legislative history of a measure covering the same topic which was passed by the previous House but on which the Senate did not act. Two years later the bill in its present form was enacted. It was a differently constituted House that debated it and the year was 1945 rather than 1943. So the most relevant legislative history, in my view, concerns the 79th Congress, not the 78th.

The fear was expressed in the House that the elimination of the Exception Clause would open up the prospect of labor being prosecuted.[1] As a consequence Congressman Celler sought to amend the measure so as to exempt the use of violence to exact "wages paid by a bona fide employer to a bona fide employee."[2] His precise amendment in that regard would define "property" in the Act as not including "wages paid by a bona fide employer to

[1] Congressman Marcantonio in 91 Cong. Rec. 11915.

[2] 91 Cong. Rec. 11913.

a bona fide employee." [3] Those who objected said that that would substantially restore the 1934 Act.[4]

Congressman Biemiller, in speaking for the Celler Amendment said: [5]

> "We fear, for example, under the bill as it now stands, that a simple, unfortunate altercation on a picket line—and we all know that human beings are frail and when tempers are hot some trouble may develop—under such a situation you may send a man to jail for 20 years or fine him $10,000."

The Celler Amendment was rejected.[6]

As I read the Congressional Record Congressman Baldwin spoke for the consensus when he said [7]

> "This bill would not have been presented to the House if organized labor had recognized law and order in striking and in establishing their rights, as they have a right to do. Everyone can remember the taxicab strike in the City of Baltimore, which does not pertain to this bill, where cabs were overthrown, bricks thrown through the windows endangering the lives of people, innocent victims. Those were the tactics of organized labor which you people support outright and which organized labor sanctioned. The leaders were locked up and put in jail for participating in these activities. Yet you stand here on the floor of this House and say they did not do it or they did not know anything about it.
>
> "Mr. Chairman, labor has a right to strike, but when labor perpetrates that sort of thing, they are

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[3] *Ibid.*

[4] 91 Cong. Rec. 11914; *Id.*, 11914–11915; *Id.*, 91 Cong. Rec. 11918.

[5] 91 Cong. Rec. 11916.

[6] 91 Cong. Rec. 11817.

[7] 91 Cong. Rec. 11918.

> going far beyond the bounds of reason. Certainly, I do not take the position that labor has not the right to organize or to strike, but when they do so they should abide by the laws of the land and the laws of decency. If they had done that, we would not have this legislation before the House today."

Congressman Whittington voiced the same sentiments: [8]

> "The pending bill will provide for punishing racketeers who rob or extort. There is no justification for labor unions opposing the bill as it constitutes no invasion of the legitimate rights of labor. Robbery and extortion by members of labor unions must be punished. Labor unions owe that much to the public. In demanding the protection of laws, labor unions should urge that those engaged in legitimate interstate commerce be protected from robbery and extortion."

Congressman Celler offered another amendment which would give as a defense to a charge under the Hobbs Act that the "employee did not violate the provisions of the Norris-La Guardia Act, the Clayton Act, or the Railway Labor Act, or the National Labor Relations Act." [9] But that amendment was also voted down; [10] the only provision of the Hobbs Act which touched on that problem being § 1975 (c) which stated that this section "shall not be construed to repeal, modify or affect" those laws. References were made in the House debates to the trucking problem in New York, where farmers bringing their produce to market in trucks were held up and money

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[8] 91 Cong. Rec. 11913.
[9] 91 Cong. Rec. 11919.
[10] *Ibid.*

was extorted "from the drivers in order that the shipments might enter the Holland Tunnel and be delivered to their respective destinations in New York." [11]

Congressman La Follette offered an amendment which would keep the 1934 Act intact but would bar the use of violence by a person not a bona fide employee to obtain property from a bona fide employer.[12] That too was defeated.[13]

In the present case violence was used during the bargaining—five acts of violence involving the shooting and sabotage of the employer's transformers and the blowing up of a company transformer substation. The violence was used to obtain higher wages and other benefits for union members. The acts literally fit the definition of extortion used in the Hobbs Act, 18 U. S. C. § 1951. The term "extortion" means the use of violence to obtain "property" from another. § 1951 (b)(2). The crime is the use of "extortion" in furtherance of a plan to do any-

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[11] Cong. Rec. 11917.

[12] *Id.*, 11919. The proposed amendment read as follows:

"(a) The term 'the payment of wages by a bona fide employer to a bona fide employee' shall not be construed so as to include the payment of money or the transfer of a thing of value by a person to another when the latter shall use or attempt to use or threaten to use force or violence against the body or to the physical property (as distinguished from intangible property) of the former or against the body of anyone having the possession, custody, or control of the physical property of the former, in attempting to obtain or obtaining such payment or transfer.

"(b) The term 'the rights of a bona fide labor organization in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States' shall not be construed so as to ignore, void, set aside, or nullify the definitions set out or the words used in or the plain meaning of subsection (a) hereof."

[13] *Id.*, 11922.

thing in violation of the section. § 1951 (a). The prior exception covering those who seek "The payment of wages from a bona-fide employer to a bona-fide employee" was taken out of the Act by Congress. Hence the use of violence to obtain higher wages is plainly a method of obtaining "property from another" within the meaning of § 1951 (b)(2).

Seeking higher wages is certainly not unlawful. But using violence to obtain them seems plainly within the scope of "extortion" as used in the Act, just as is the use of violence to exact payment for no work or the use of violence to get a sham substitution for no work. The regime of violence, whatever its precise objective, is a common device of extortion and is condemned by the Act.

Congressman Lemke said in the House debates on the Hobbs Act which he opposed, "The minority is generally right." [14]

Whatever may be thought of the policy which the Court today embroiders into the Act, it was the minority view in the House and clearly did not represent the consensus of the House. No light is thrown on the matter by the Senate, for it summarily approved the House version of the bill.[15]

It is easy in these insulated chambers to put an attractive gloss on an Act of Congress if five votes can be obtained. At times the legislative history of a measure is so clouded or obscure that we must perforce give some meaning to vague words.[16] But where, as here,[17] the

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[14] *Ibid.*

[15] 92 Cong. Rec. 7308.

[16] See, *e. g.*, *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 615–616, for the use by Congress of the rather opaque phrase "area of production."

[17] The fear was expressed in the House debates by opponents of the measure that a fistfight on a picket line during a strike could bring down on the offender a $10,000 fine and 20 years in jail or

consensus of the House is so clear, we should carry out its purpose no matter how distasteful or undesirable that policy may be to us, unless of course the Act oversteps constitutional boundaries. But none has been so hardy as even to suggest that.

While we said in *Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 522, that it is "retrospective expansion of meaning which properly deserves the stigma of judicial legislation," the same is true of retrospective contraction of meaning.

I would reverse.

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both. See 91 Cong. Rec. 1916. And the Government actually argued in one case, *United States* v. *Caldes*, 457 F. 2d 74, 78, that a union and its members were guilty of extortion if they used the coercion of a strike to obtain economic benefits from the employer. That, however, is nonsense, as the Court in *Caldes* ruled, *id.*, at 89, for the Hobbs Act specifically does not touch collective bargaining of which the strike is a component part. 18 U. S. C. § 1951 (c). Moreover, the Court in *Caldes* held that "mischievous" conduct during a strike and actions which are "the by-product of frustration engendered by a prolonged bona fide collective negotiation," *id.*, at 78–79, are often only low-level acts of violence that may be unfair labor practices or, at best, subject to state not federal prosecution. That is my view.